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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI AND LEE SAU CHONG,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 16, 1937.

CERTIORARI GRANTED OCTOBER 18, 1937.

SUPREME COURT OF THE UNITED STATES

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(Testimony of Charles I. Deville.)

A. Well, that's only a portion of what he said.

Q. I don't mean that's everything he said, but that that's the substance of what happened in connection with the alteration of this bill as he told it to you?

A. I'd like to supplement that by saying that he was first shown the changed voucher of May 12th, and first stated that the pumpkin was not delivered.

Q. I thought you said that what happened in that connection was that the bookkeeper thought the pumpkin might have been one of those that hadn't been delivered, and that Lee Chong corrected him and said he thought it had been delivered; didn't you say that?

A. That's correct. When these items were pointed out to me Mr. Lee Chong and Mr. Roque had some conversation as to whether or not the pumpkin was delivered;——

Q. You mean, as to whether or not the pumpkin was one of the items that had been used in the place of some of the other items that were listed?

A. No sir; as to whether the pumpkin had been delivered or not; Mr. Roque first stated that it had not; Mr. Lee Chong corrected him, and then later agreed he might be mistaken and that the pumpkin had been delivered after all on the original invoice which is United States Exhibit "B".

Q. So that the net result of the conferences over there was that he was under the impression that

(Testimony of Charles I. Deville.)

the pumpkin was delivered on the original invoice, although there had been some thought in his bookkeeper's mind that it had not [497] been delivered, or vice versa?

A. That's correct.

Q. The bills, of course, are for the same amount?

A. That's correct?

Q. I don't understand that you contend that Mr. Lee Chong told you that he tried to charge the Government any more money than represented goods that had been delivered to them?

A. No; Mr. Lee Chong contended——

A. That he delivered dollar for dollar merchandise to the Camp?

A. That's correct; he contended he had delivered all of the items on all of the bills he had, with the exception of the May 12th and September 1st, which he explained as I related before.

Q. The same is true, is it not, of the September voucher, that is, the September 1st voucher, being Government's Exhibit "G" in a total amount of $526.60, and the two other vouchers, being Exhibits "H" and "J", in the total amount, so far as the two vouchers are concerned, of the same figure of $526.60, the one being for $454.10 and the other for $72.50; the same is true, is it not, Mr. Deville, in the sense that Mr. Lee Chong told you that he had delivered $526.60 worth of merchandise as represented by the two latter vouchers, being "J" and "H", and not the exact merchandise as represented

(Testimony of Charles I. Deville.)

by the first voucher, being Exhibit "G"; is that not right?

A. Would you mind reading the question over?

Q. It is true, is it not, that's what Mr. Lee Chong told you with reference to these three vouchers you have before you? [498]

Mr. MOORE: That "J", "G", and "H", that Lee Chong told you that the goods in a total amount of $526.60, represented by "G", $72.50 on "J", and $454.10 on "H", had been delivered to the Camp.

A. Yes, that the articles listed on Exhibits "J" and "H" had been delivered to the Camp.

Mr. ULRICH: And that Exhibit "G" was a statement that had been made and later changed to "J" and "H" at Mr. Miles' request, as I understand it, which had originally had in the place of the non-edible items on Exhibit "J" certain edibles that appear on Exhibit "G"; that's true, is it not?

A. Yes, that's correct.

Q. In other words, Mr. Lee Chong told you in substance that he had originally listed certain non-edibles as edibles at the request of Cunningham—and did you say Mr. Cunningham and Mr. Mookini, was that your testimony?

A. That's correct; that's what he told me.

Q. Now, I believe you want to be fair about this, Mr. Deville, and you recall all that testimony so far as referring to Mr. Cunningham and or Mr. Mookini; to be perfectly frank with you, it's my contention, my understanding, that he didn't refer

(Testimony of Charles I. Deville.)

to Mr. Mookini in that regard; he told you about a time that Mr. Mookini had come in there—I am just trying to refresh your recollection—after Mr. Cunningham had had certain changes made. Frankly, how do you recall that well? You had numerous conversations with Mr. Lee Chong—and if you're referring to the conversation of the morning of October 26th, at which Mr. Tom Hoon was present and you weren't, Mr. Lee Chong said that Mr. Mookini and [499] Mr. Cunningham came in the office and it was at their request that the changes were made, and he quoted a part of a conversation that Mr. Cunningham is supposed to have told him; what was that?

A. That Mr. Cunningham said that some articles listed on the original May 12th invoice could not be charged to the Mess Fund, and that it would have to be changed into edibles or articles of subsistence.

Q. And that was what Mr. Cunningham said. What I'm trying to get is: From what Mr. Lee Chong said, are you now telling the jury that he said that Mr. Mookini had directed that those changes be made—not Mr. Cunningham?

A. No; I am telling the jury that both of them came into the office, and it was at their request——

Q. No; I am asking you to tell us what Mr. Lee Chong told you about Mr. Mookini; what was said?

A. He didn't quote any of Mr. Mookini's conversation, to me, that I recall.

(Testimony of Charles I. Deville.)

Q. Was he talking about the May 12th bill at the time he said Mookini and Cunningham had come in; or the September bill, or both?

A. Both; he was talking about both at the same time, but as we spoke of each in turn he said that they were both in there.

Q. They might both be in there without both directing or proposing the change; didn't he tell you how the changes were made—explain the procedure, or what was done or who did it, and all that sort of thing?

A. Yes, to the extent that he stated that he had Mr. Roche fix these vouchers up. [500]

Q. That Mr. Roche had done it?

A. That's correct.

Q. I mean, with reference to participation of either Mr. Cunningham or Mr. Mookini in the process of changing or the giving of directions, or anything of that kind?

A. Well, to the best of my recollection and belief, Mr. Lee Chong said or led me to believe that it was done jointly, that they were both there, that it was at their request that these changes were made.

Q. At each time, in May and in September?

A. That's what he told me.

Q. You don't recall any particular reference to anything said or done by Mr. Mookini as distinguished from Mr. Cunningham that he told you?

A. No, he made no distinction between the two.

(Testimony of Charles I. Deville.)

Q. They were there at one time together, but that's a very different thing from saying that they both ordered and directed the changes; you understand what I mean?

A. Yes, I understand what you're driving at; I am just quoting Mr. Lee Chong's conversation to me.

Q. I see; all right.

A. If it's in order, I'd like to also state that the questioning went further, and that Mr. Lee Chong refused to permit me to see his books.

Q. Well, I don't believe it's particularly in order, but now that you've said it we'll let it go in.

A. I just wanted to be fair.

Q. What do you mean, he refused to let you see his books? As a matter of fact, he told you to look at his books and let you take pictures of them?

[501]

A. Yes; after about my sixth visit he finally permitted me to take pictures of certain pages in his Chinese record book.

Q. That isn't proper to interject here; we let you see these books and all the records you wanted to see; I don't know about how much time it took; the fact is, you ultimately saw all he had?

A. No sir.

Q. You didn't?

A. No sir.

(Testimony of Charles I. Deville.)

Q. What was it you particularly wanted to see?

A. I asked him for his receipts for the month of May.

Q. His receipts for the month of May?

A. That's correct; I mean by that, the receipts for the vegetables which he purchased from outside sources.

Q. You mean the receipts for the money for the original voucher that he had expended?

A. That's correct.

Q. And what did he tell you—that he had them, or wouldn't give them to you, or what?

A. On this particular occasion he said that Mr. McGregor had them.

Q. Well, we'll find out about that.

A. Well, I phoned Mr. McGregor; I phoned from Mr. Lee Chong's telephone, and McGregor said that he never had them; and I asked Mr. Lee Chong about that, and he said maybe Chun Yau Chee has these, and he explained that Chun Yau Chee had gone to China during the latter part of June, 1934, so that they were not available.

Q. And so that's the only thing you didn't get that you wanted, were the receipts for the month of May? [502]

A. Let me put it another way; the only thing I had a chance to look at that I wanted was his Chinese record book.

Q. You got his Chinese record book, you got his statements, you had him explain to you defi-

(Testimony of Charles I. Deville.)

nitely how these things had been done down there, he gave you a full statement about all the questions you asked him about what happened?

A. No, I wouldn't say that; he gave me a full explanation with regard to the May 12th and September 1st vouchers, but I would say he was evasive on other points that are not probably material to the issue.

Q. No; you'd say most anything if we let you carry on far enough.

A. Well, you're asking me, Mr. Ulrich.

Q. The matter of the May 12th and of the September 1st statements were gone into and explained along that line that you've said?

A. That's correct.

Mr. ULRICH: That's all.

Mr. MOORE: That's all. The case for the United States.

Mr. ULRICH: If Your Honor please, at this time defendants present a motion for an order of the Court to direct a verdict of "not guilty" and dismissing the counts on the prosecution's own evidence.

We have a considerable body of authority of law, and I anticipate that the arguments on the facts may be somewhat prolonged. Mr. McGhee will handle the legal end of the thing more particularly.

And even at the conclusion of that argument I do not feel that the defendants would be ready to proceed this morning, unless the Court feels it is very [503] urgent that they should do so. I would suggest that we permit the jury to be excused at this time, and proceed without our motion and to argue on the motion.

The COURT: Would you be prepared to take up the matter of instructions?

Mr. ULRICH: We have, I wouldn't say, a complete list of instructions; we have, I think, probably the bulk of those instructions ready to present at this time. In other words, I think we could accomplish a great deal that would have to be done in the absence of the jury that it would be unfortunate if they were required to stay around while all this is going on; I think it will probably result in a dismissal anyway before we get through.

The COURT: Gentlemen of the jury, at this time I wish more emphatically than before to caution you about secrecy in this case. You will now be excused until nine o'clock Monday morning.

(Jury retire from courtroom—10:22 a. m.)

Mr. McGHEE: This motion, Your Honor, is based upon the fact that there has been no evidence here introduced sufficient to support a conviction in this case, for numerous reasons. The evidence fails to show that these defendants, or either of them, made or offered to be made, presented or caused to be presented a fraudulent claim upon the United States or any department thereof.

The Court will recall the language of the statute, as to the first ground; it provides that "whoever shall make" (quoting), "knowing such claim to be false, fictitious, or fraudulent", is guilty of the crime charged in this indictment. [504] The vouchers in this case and the invoices that have been introduced in evidence and the exhibits that have been so much talked about here show that they were not presented to the Government of the United States through any department thereof or any officer of the United States; each of these vouchers, the particular voucher of May 12th, 1934, are headed "Chun Yau Chee, Successor to Lee Chong Co." It may not be of any importance, but the Court will recall that the indictment charges as to May 12th that the voucher was in the sum of $231.00, purporting that Lee Chong Company had delivered these groceries. Now, these vouchers were billed "C. C. C. Camp Schofield Barracks Upper-post, Schofield, Oahu, T. H." The only bill in the whole outfit that is billed otherwise is the bill that was made at the request of Captain Miles, according to his own testimony, of September 1st, 1934, which was billed to the Canteen, in the sum of $72.50. Now, what is this C. C. C. Camp? It's not the United States Government, it's not a department of the Government, we don't know what it is, it may be . . . (argument continued).

Mr. ULRICH: May I just supplement Mr. McGhee's remarks as to one of the points which he

has urged, because to me it seems to be a perfectly conclusive contention at this time; it is the statute under which this case is being presented to the Court, or, rather, to the jury on the facts at this time; it is, "Whoever shall make . . ., shall be fined", and so forth and so on. This argument is directed to the evidence that's before the Court. I'm not asking the Court on this phase of the matter to reconsider the indictment in the case at all. The evidence before the Court shows this, that the C. C. C. Camp, so far as the [505] financial situation out there was concerned, was partially a Government enterprise and partially a non-government enterprise. The Government's own testimony is to the effect that there were several funds out there, all under the direction or control of Mr. Miles, the Director of the Camp; one of those funds was the Mess Fund; that's the only government fund that comes into the picture, so far as this case is concerned. . . . (Argument continued.) . . . That's just one of the points that's been raised by Mr. McGhee, and I submit it's conclusive and that on that ground the defendants, and certainly Mr. Lee Chong, are entitled at this time, Your Honor, to a directed verdict of not guilty, which would be a dismissal of the case on the prosecution's evidence.

Mr. MOORE: May it please the Court, the basis of this action is fraud against the United States Government; and the word "fraud" is defined as

any means, scheme, or artifice by which any person is led to pay some money to which he would not otherwise be entitled. In this particular case the indictment—I'll just cover the statement of Mr. McGhee that this indictment is faulty because it says "Lee Chong Company" and not Chun Yee Chow, or something like that . . . (argument continued) . . .; and, so far as this Mess Fund is concerned, when you have money paid out of that for a purpose that it is not established for, the fraud is self-evident. And we submit, may it please the Court, that this motion to dismiss is not well taken.

Mr. McGHEE: Now, if Your Honor please, there's no question about the fact that Mr. Lloyd's testimony, Mr. Miles' testimony, and Captain Baldwin's testimony, that certain [506] funds went out to Schofield Barracks for the purchase of foodstuffs. There is no evidence, however, that the Camp Director out there who expended those funds was an officer of the United States Government. It's entirely possible that those funds were turned over to Mr. Miles as a Territorial employee . . . (argument continued) . . . and I submit the Court could not take judicial notice, if at all, of a regulation without having that regulation directly before him in order that he may be informed as to what that regulation was at the time it is alleged that these crimes were committed.

Mr. ULRICH: Just a word, if Your Honor please, on the point I have discussed before . . .

(argument continued) . . . I submit that the evidence shows the bill was not presented to the United States Government; that it was presented to a man who had the dispensing of government and non-government funds, and that that man either paid it one way or directed it to be charged one way or the other, and nothing from which the Court could possibly hold that there was the very crime and the only crime charged in this indictment, namely, the presentment of a bill for payment by the United States Government and out of Government money.

The COURT: The Court noted that in one breath counsel argued that there was nothing to show that this C. C. C. Camp was a government activity, and in the next statement he said there is nothing to show that the United States Government didn't get value received for every dollar it paid. The two statements are entirely inconsistent, and the last statement clearly admits that he believes that [507] this was a United States Government activity; and that is all the Government charges in the indictment or is required to do under the statute. If this is a department of the United States Government, or, again, quoting Mr. Ulrich's language this time, "a service of the United States", it then meets the requirements of the law.

Now, if this were a mere matter of formal bookkeeping, of course there would be nothing to go to the jury. Mr. Lee Chong would not be con-

cerned whether he was to be paid out of a canteen fund or some other fund; he would be concerned with getting payment; but he is charged here with presenting a false bill or voucher, one that is fictitious and not true in its statement; when a bill is presented for payment it is presumed to represent the correct transaction, correct prices, and the correct quantities, and the correct character of the goods presented on that bill or voucher. The evidence in this case is to the effect that that was not done in this case, that a number of these items were not true and correct, that they were falsified or made fictitious. The Court does agree, however, with the contention that what was done would have to be intentionally and knowingly done, and will so instruct the jury if requested; but that's a matter for the jury to determine in determining the weight and value of this evidence.

The Court is of the opinion that there is evidence that's been presented in this case to warrant a verdict at the hands of the jury. The motion for a directed verdict or to dismiss is DENIED.

Mr. ULRICH: Defendants note an exception to the ruling of the Court. [508]

The COURT: Exception is allowed; let the exception be noted.

Now, as to this matter of instructions. The Court indicated a moment ago that it might be well to take them up at this time. If counsel is not entirely prepared, we might save time by deferring

until Monday afternoon; but I would urge by all means that you have such instructions as you want to present ready at the conclusion of Monday morning's session whether the evidence is actually concluded at that time or not.

Mr. ULRICH: Very well, Your Honor.

The COURT: The Court will now adjourn until 9:00 o'clock Monday morning.

(Adjourned—11:02 a. m.) [509]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Monday, May 20th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States, and stipulate that the jury is present.

Mr. ULRICH: Ready for the defendants, and we'll also so stipulate.

The COURT: Let the record show the stipulations in the presence of the jury. You may proceed, Mr. Ulrich.

Mr. ULRICH: Your Honor, we proceed at this time with the defendants' case.

LEE SAU CHONG

being first duly sworn as a witness in behalf of the defendants, testified as follows: [510]

Mr. ULRICH: If Your Honor please, Mr. Lee Chong speaks English well enough for all ordinary purposes; I think we'll be able to get along entirely without an interpreter; we have carried along ordinary conversations with him. It may be we'll want to ask for an interpreter as to questions now and then; however, I'll try to get along.

The COURT: If you think it's necessary, we can send for the official interpreter.

Mr. ULRICH: If he can just be ready; I don't know that I'll need him.

The COURT: Mr. Bailiff, see that the official interpreter is on call at need.

Mr. MOORE: Your Honor, I believe that the ruling on the motion that was made here last Friday should be given in the presence of the jury, but that there should be of course no reason for it —just the ruling itself.

Mr. ULRICH: I don't know that it's necessary, but now that it's been mentioned in the presence of the jury it might as well be made in the presence of the jury; I think the ruling has been properly made in the record.

The COURT: If there's any question about it, we'll say that the motion is denied, and defendants excepted, and the exception is allowed.

(Testimony of Lee Sau Chong.)

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Lee Chong, how old are you?

A. 42.

Q. What is your connection with that certain business known as the Lee Chong Company?

A. Manager for Lee Chong Company. [511]

The COURT: Now, Mr. Witness, you're not talking to Mr. Ulrich; you're talking to twelve men over there; it's important that they should hear you.

Mr. ULRICH: How long have you been managing that business?

A. Since 1934.

Q. Who is the present owner of the business?

A. After 1934 it was Mr. Lee Kim Kip.

Q. In 1934 who owned the business?

A. Chun Yau Chee.

Q. When did it change hands from Chun Yau Chee to Lee Kim Kip?

A. Around June of 1934.

Q. Mr. Lee Chong, during the year 1934 you had certain business dealings, did you not, with what was known as the C. C. C. Camp at Schofield Barracks?

A. Yes sir.

Q. Will you explain how you first started to do business with the C. C. C. Camp?

A. Around April, 1934, Mr. Cunningham come down our office and tell me to go up there and see Mr. Miles and Mr. Mookini.

(Testimony of Lee Sau Chong.)

Q. Mr. Cunningham came to your office and told you to go out there and see Mr. Miles and Mr. Mookini?

A. Yes sir.

Q. And did you go out to the Camp?

A. Yes sir, I did.

Q. And whom did you see out there?

A. Mr. Cunningham introduced me to Mr. Miles and Mr. Mookini.

Q. There has been some suggestion in the evidence that perhaps Major Mahaffy might have been there at that time; was he there—Major Mahaffy, who testified here?

A. I didn't see him there. [512]

Q. You did not see him there; so he was correct in saying that he would not remember you being there?

A. Yes sir.

Q. As a result of your conversation with these gentlemen at that time what happened relative to the commencement of any business with the Camp by you?

A. I don't quite understand you, Mr. Ulrich.

Q. Did you get an order at that time?

A. Yes, they all agreed to give me the order.

Q. That was the first order you got?

A. Yes, the first order.

Q. Who gave you the order?

A. Mr. Cunningham, Mr. Miles, and Mr. Mookini.

(Testimony of Lee Sau Chong.)

Q. They were all there together, but who gave you the order or the list, whatever it was, you were to bring out?

A. Mr. Cunningham.

Q. And that was the first order that you had from the C. C. C. Camp?

A. Yes sir.

Q. Now let me ask you this, Mr. Lee Chong: At the time that you took this order, or any subsequent orders, did you have any knowledge of the way in which the various funds at the Camp were handled; did you know anything about the Mess Fund, for example?

A. No sir.

Q. Did you know anything about the Canteen Fund?

A. No sir.

Q. Or the way the equipment was bought out there, did you know anything about that?

A. No. [513]

Q. You delivered goods to the C. C. C. Camp, did you, on that first order?

A. Yes sir.

Q. And on later orders?

A. Later, from that time until October, 1934.

Q. And when you would send your bills to the Camp—I call your attention to the fact that every bill in evidence, with one exception which we'll comment on later, is directed just "C. C. C. Camp,

(Testimony of Lee Sau Chong.)

Schofield Barracks"; that's the way you billed them out there, was it?

A. Yes sir.

Q. There came a time, Mr. Lee Chong, I believe, when some goods were ordered for a Mothers' Day dinner; do you remember that?

A. Yes sir.

Q. When was that order placed, if you remember?

A. The order was placed May 11th.

Q. May 11th?

A. Around May 11th.

Q. With reference to Mothers' Day, what day was Mothers' Day, if you recall, last year; the Sunday was on what date?

A. I don't remember what day, Sunday or Monday, but Mr. Cunningham placed the order for the list of goods, that's around May 11th.

Q. May 11th?

A. Yes.

Q. When that list of goods was ordered, do I understand that Cunningham brought the list to you?

A. Yes sir.

Q. Did anybody else come with him?

A. No.

Q. He was alone when he ordered those goods, is that right?

A. Yes sir. [514]

(Testimony of Lee Sau Chong.)

Q. Now, was there anything said about the way in which any article on that list was being ordered should be billed to the Camp?

A. Well Mr. Cunningham he had a list in his hands, and he called that article of goods, and I had a paper and marked it down whatever he give it to me.

Q. You marked down whatever he gave you of the list, is that what you mean?

A. Yes sir.

Q. Well, I'll ask you this: Were there any flowers on the list from which he was ordering to be delivered to the Camp?

A. Yes sir.

Q. Did he say anything in particular to you about how you were to charge or list those flowers?

A. Yes sir.

Q. What was said?

A. He said that "flowers not edibles", and he want to change as oysters; then I ask him, "Why you want to have change to oysters?" So he said that the oysters was ordered by Mr. Miles.

Q. That Mr. Miles had ordered it to be done?

A. Yes, that's why he wanted the oysters charged to the bill.

Q. Did you ever get any definite information at that time as to why the change was wanted excepting that it had been directed by Mr. Miles?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Was there anything which explained to you—did you know why Mr. Miles wanted to have it done that way, for example? [515]

A. He told me that the cut flowers is not eatables, so he say that Mr. Miles want me to charge as what he told me to charge.

Q. Was that all?

A. That's all.

Q. No further explanation of any kind?

A. No sir.

Q. So that you merely knew that for some reason Mr. Miles wanted these flowers, which were not eatables, charged as oysters, which were eatables?

A. Yes sir.

Q. Then did you prepare that list of goods which was to be taken out there for delivery—get them ready to deliver?

A. Then I marked down the list what Mr. Cunningham give it to me, and turn it to Monty, my bookkeeper.

Q. Monty, your bookkeeper?

A. Monty Roque.

Q. You turned the list over to him, is that right?

A. Yes sir.

Q. And he made the suitable arrangements to have it taken out, is that what you mean?

A. He make it out, the bill.

Q. Were any flowers bought to go out on that order?

A. On the May 12th order, yes.

(Testimony of Lee Sau Chong.)

Q. Yes, on the Mothers' Day order?

A. Yes sir.

Q. Where did you get them?

A. That's our driver or someone, Chun Yau Chee, he buy that.

Q. You mean, they got the flowers?

A. Yes, they buy the flowers.

Q. Well, finally the goods were ready and were taken out to the Camp, is that right?

A. Yes sir. [516]

Q. Did you go out with that load yourself?

A. Yes sir, I did.

Q. And when you went out there—by the way, when was it that you took that load out, what day, if you recall?

A. That's May 12th.

Q. Was it the day before Mothers' Day?

A. Mothers' Day is the 13th.

Q. Was it the day before Mothers' Day, if you recall?

A. All I remember it was around May 12th.

Q. When you went out with this load of goods who drove you out; who else went with you?

A. Louis Hutchinson, the driver, and I.

Q. Louis Hutchinson and you? Did you take with you the bill which you say had been prepared by Mr. Monty Roque, your bookkeeper?

A. Yes sir.

Q. Did you take merely one copy, or more than one copy of that bill?

(Testimony of Lee Sau Chong.)

A. One original, one duplicate.

Q. One original and one duplicate?

A. Yes sir.

Q. I now show you, Mr. Lee Chong, the United States Government's Exhibits "B" and "C", the one being a carbon copy, so far as typewritten material is concerned, of the other; and ask you to state whether or not those are the bills that you took out with you to the Camp that day with the Mothers' Day load?

A. That's the one (indicating).

Mr. MOORE: Indicating which?

Mr. ULRICH: Indicating Exhibit "B". What about the other one, Exhibit "C"? [517]

A. Not this one.

Q. Well, Mr. Lee Chong, look at these carefully and you'll see that one is a carbon copy of the other. You said that you took the original and a carbon copy; this is no different excepting it's a carbon copy. I just want to know; if you think you had another carbon, all right, but if you think that is the carbon you took, please say so.

A. I remember this original, but this (indicating) is a copy.

Q. If you don't identify the copy, that's all right; do you think you had another carbon? You said a moment ago you delivered a carbon copy of the original?

A. I remember the original and duplicate; the duplicate is the same as the original.

(Testimony of Lee Sau Chong.)

Q. What have you to say about this: You've identified Exhibit "B" as the original you took. What about "C"; to the best of your belief, is or is not that the carbon that you took out at the time?

A. Well, the copy of this original is the same.

Q. By that do you mean that if it's the copy of the original it may have been the copy that you took with you?

A. This is one original and with the duplicate; it's the same.

Q. By that do you mean—I just want to know do you mean that's the original and duplicate that you took out there, or not?

A. Yes, that's the ones.

Mr. ULRICH (showing documents to the jury): The jury has seen this, I believe, the original with the paper plates and napkins on it, and the carbon copy.

Q. When you arrived at the Camp who was there? [518]

A. Mr. Miles and Mr. Cunningham.

Q. Mr. Miles and Mr. Cunningham? Where did you take this load of groceries to, at the C. C. C. Camp?

A. I take it to the C. C. C. Camp, that kitchen over there.

Q. To the kitchen?

A. Yes sir.

Q. When I ask you who was there, I am talking of the place where you stopped and unloaded your groceries; who was at that place?

(Testimony of Lee Sau Chong.)

A. Mr. Miles and Mr. Cunningham.

Q. When you arrived did you have any talk with Mr. Miles and Mr. Cunningham, or Mr. Miles, or Mr. Cunningham?

A. Yes sir, I did.

Q. What happened, and what was said?

A. Yes, I did see Mr. Miles there, and Mr. Cunningham there, right at the kitchen; I say, "Good morning, Mr. Miles"; I said, "I have stores for you, will you please check that up."

Q. You said you had what?

A. I had stores.

Q. Stores?

A. Yes; "I have vegetables and fruit and so on for your Camp," I said, "please have check it up"; so Mr. Miles he receipted—the envelope had two bills inside, and he open up and take a look at it and he read everything out.

Q. By that do you mean these two bills?

A. Yes sir.

Q. Referring to Government's Exhibits "B" and "C"?

A. Yes sir.

Q. Then what happened?

A. And he looked at the bill and he called Mr. Cunningham; he said, "Johnny, did you buy any oysters from Mr. Lee Chong?" He says, "Why no"; he says, "Do you remember telling me that is the oysters in place of the cut flowers?" He says,

(Testimony of Lee Sau Chong.)

[519] "Oh yes, you told me to change that, cut flowers was put as oysters"; he says, "Oh yes".

Q. What did Miles say?

A. Mr. Miles say, "Oh yes; if any change on that, go ahead, check it up and release Mr. Lee Chong and let him go back to the store."

Q. By the way, that is Mr. Miles and Mr. Cunningham that went out of the door there; do you recognize them?

A. Mr. Miles, yes.

Q. Those two gentlemen that just went out of the door, did you recognize them?

A. I didn't see.

The COURT: We'll have them called, if you wish, Mr. Ulrich.

Mr. ULRICH: No, I don't think it's necessary.

A. Mr. Miles say, "Oh yes; Johnny, you check that load out and O. K. the bill, and release Mr. Lee Chong to go back to the store."

Q. Let me just understand; I have a little difficulty in understanding you. I understand that Mr. Miles took the list and looked it over and then said to Mr. Cunningham, "Did you order any oysters, Johnny?" or something like that, is that right?

A. Yes sir.

Q. And Cunningham said to him, "No, those are the flowers that you told me to get", or something of that kind, is that right?

A. Yes. I repeat again: When I deliver the goods to the C. C. C. Camp that morning, and I

(Testimony of Lee Sau Chong.)

see Mr. Miles over there and Mr. Cunningham over there, right in the kitchen there, and I say, "Good morning, Mr. Miles"; he say, "Good [520] morning, Lee Chong"; and I handed that bill to Mr. Miles, and he take off that bill from the envelope and he take a look at it, and he call Mr. Cunningham; he say, "Johnny, you buy any oysters from Mr. Lee Chong?" He say, "Why no; don't you remember you told me to buy the cut flowers for the Mothers' Day use and to charge as to the oysters?". He say, "Oh yes; whatever is changed is all right; go ahead and check that load and release Mr. Lee Chong and let him go back to the store."

Q. Now, was anything said between Mr. Miles and Mr. Cunningham in your presence there about any other changes that were to be made in this bill?

A. Yes; then Mr. Cunningham said—he call him "Billy"; he say, "Billy, we have some paper——"

Q. Called whom Billy?

A. Call Mr. Miles. He say, "Billy, you had those paper plates and paper napkins and assorted candy and assorted nuts, should be changed"; he say, "Johnny, any change——"

Q. Who said this?

A. Mr. Miles.

Q. Said to Cunningham, calling him "Johnny"?

A. Yes; he say, "Johnny, if anything should be changed, go ahead and have it changed."

(Testimony of Lee Sau Chong.)

Q. Then what happened—anything else?

A. Then Mr. Cunningham check up the load out of my car and he sign for the bill.

Q. And——

A. One minute. Mr. Cunningham told me, he say, "Later, one day or two, we are going come down (my office) and arrange a change."

Q. You mean, he was coming to town to fix up the other [521] changes that he was talking to Miles about?

A. Yes sir.

Q. Were you there as those goods were checked off from the truck you had them in on to the kitchen floor, or wherever it was they were unloaded on?

A. Yes sir.

Q. You were there as the truck was unloaded?

A. Yes sir.

Q. And did you see the goods as they were checked off and watched them being checked off there?

A. Yes sir.

Q. By Mr. Cunningham, as I understand it?

A. Yes sir.

Q. I am going to ask you, Mr. Lee Chong, to state, if you will, whether or not, with the exception of the oysters listed here, which you've told us were flowers which were delivered that day, with that exception, can you state whether every article on this list was actually delivered there that morning at the C. C. C. Camp, was it?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Were there paper plates delivered?

A. Yes sir.

Q. Were there paper napkins delivered?

A. Yes sir.

Q. And the strawberries, and the crabs?

A. Everything delivered on that bill except the oysters.

Q. And what was delivered in place of the oysters?

A. Cut flowers.

Q. Now, Mr. Lee Chong, was any liquor delivered there that morning by you to anyone?

A. No.

Q. Can you state definitely whether or not there was any [522] liquor taken out with you on that wagon?

A. There's no more liquor.

Q. "No more liquor", or no liquor?

A. No liquor, I mean.

Q. You heard the testimony that's been given here by Mr. Cunningham, have you not; you heard Mr. Cunningham's testimony to the effect that you took a package out of that car, a box about like this (indicating), and handed it to him and told him that it was liquor for Mr. Mookini; is that testimony true, or is it false?

A. It's not true.

Q. Did you hand any box to Mr. Cunningham and tell him that it was for Mr. Mookini?

A. Never.

(Testimony of Lee Sau Chong.)

Q. Did you unload and carry away from the truck, so far as that's concerned, any box yourself?

A. No sir.

Q. How was the unloading done?

A. Unloading done by our driver, Louis Hutchinson; he do all the carrying.

Q. He carried the goods over and put them down in the kitchen?

A. Yes sir.

Q. Do I understand that you didn't even handle any of the packages that were delivered there that morning, yourself?

A. Yes sir.

Q. You further heard the testimony that's been given by Mr. Cunningham to the effect that there was a time shortly after you commenced delivering goods out to the Camp when you came to him and told him that you wanted him to O. K. [523] bills in which there would be camouflaged groceries which were to be personally delivered to Mr. Mookini; do you remember that testimony?

A. I want you to repeat again.

Q. I am calling your attention now to some testimony that was given by Mr. Cunningham, to the effect that he came to you shortly after you started delivering goods out there, one day, and asked you, or, rather, that you asked him if he would O. K. bills in which you would hide certain of Mr. Mookini's personal groceries; do you remember him saying that on the witness stand?

(Testimony of Lee Sau Chong.)

A. Yes sir.

Q. Is there any truth at all in that testimony?

A. Not true.

Q. Did you ever have a talk with Mr. Cunningham in which you even discussed the matter of any personal groceries to be sent to Mr. Mookini?

A. No sir.

Q. Did you ever talk to him about OK'ing any bills which could in any way affect Mr. Mookini's personal groceries or anything of that kind at all?

A. No.

Q. As a matter of fact, Mr. Lee Chong, did you ever have an account with Mr. Mookini, and, if so, when?

A. I have account with him until September, 1934.

Q. Not until September, 1934; and when you opened that account for him did you keep a record of it in your books?

A. Yes sir, in our books.

Q. Before opening that account with Mr. Mookini in September of 1934, was there any buying or selling of goods to Mr. Mookini by you? [524]

A. Yes sir.

Q. What kind of sales?

A. Some groceries and some fruits and vegetables.

Q. I know, but were they cash or were they credit sales?

A. Credit sales until September, 1934?

(Testimony of Lee Sau Chong.)

Q. I am talking now about before September.

A. Before September all the time that is cash.

Q. That is, whatever he got he paid for at the time?

A. Yes sir.

Q. And, so far as that's concerned, was there much of any kind of groceries sent to him or bought by him for cash, was there much of it?

A. Not much.

Mr. ULRICH: I'm sorry, Your Honor; I thought I had some material here that's still in the office—I haven't brought it over; so I have to withdraw that question for the moment.

Q. Now, Mr. Lee Chong, I show you the United States Exhibits "D" and "E", the one being a carbon copy of the other as to typewritten matter thereon; I call your attention to the fact that those exhibits show the same total as the exhibits which you've just identified here as having been taken with you with the load; and I ask you if you personally had anything to do with the making of the changes which appears have been made, eliminating the paper plates and the strawberries and putting other things in their places on the second bill; were you there when that was done and do you know how it happened to be done when it was done?

A. These changes, Mr. Cunningham tell Mr. Monty to do that. [525]

Q. He told Mr. Monty—and by that you mean your bookkeeper—to do that?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Were you there when he told him to do that?

A. No.

Q. You weren't even there when that was done, is that right?

A. Yes sir.

Q. You later learned that Mr. Cunningham had told Mr. Monty to make those changes?

A. Yes sir.

Q. Going back again to the original bills that were taken by you to the Camp, what did you do—showing you Exhibit "B"—with that bill after it had been checked over by Mr. Cunningham?

A. I take this bill back; I give it to Mr. Monty to keep file on that.

Q. After the goods had been checked off as they were taken off the truck there, did Mr. Cunningham put his signature or initials on the bill?

A. Yes sir.

Q. Do you recognize that as his initials (indicating)?

A. Yes; "J. E. C."

Q. Then you took that original with you as your receipt back to your place of business, is that right?

A. Yes sir.

Q. What did you do with the carbon copy, if you know?

A. Mr. Cunningham get this carbon copy, the duplicate.

Q. That is, you left that with him?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. That was the usual practice; you would take the original back with the receipted signature, and leave a copy for their records out there? [526]

A. Yes sir.

Q. And that was done at that time?

A. Yes sir.

Q. I have asked you the question, Mr. Lee Chong, as to whether you ever had any talk with Mr. Cunningham about putting any of Mr. Mookini's groceries on the Camp bills; I'll ask you now whether anything of that kind was ever done?

A. Never.

Q. Mr. Cunningham referred to groceries going to Mr. Mookini in an amount in one instance as large as over a hundred dollars in a month. Did Mr. Mookini ever purchase from you in any month or at any time groceries in any such amount as that?

A. No.

Q. Mr. Lee Chong, do you recall, later in your dealings with the C. C. C. Camp, a time when certain groceries and other things were ordered for a luau to be held out there early in September?

A. Yes sir.

Q. Do you remember that?

A. Yes sir.

Q. Do you recall who placed the order for that luau?

A. Mr. Cunningham.

Q. Did he bring with him a list of any kind?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. You were there when the list was brought, were you?

A. Yes sir.

Q. How was the list taken down by you there at the store?

A. He had the list of goods on his hand, and he called to me; I had a paper and marked down all what he give it to me.

Q. Do you recall whether or not there were any articles on [527] that list such as keawe wood and chicken wire, and things of that kind, which were not eatables?

A. Around September 1st, yes.

Q. On the order that he gave you for September 1st were there such articles?

A. All that articles was sent; he give me the vegetables and fruits, whatever he give me, it's the same time; there's no separate bill or anything.

Q. Beg pardon?

A. He give me that on September 1st, that order; he give me one time the order.

Q. At one time he gave you the order for all of these things, is that what you mean?

A. Yes sir.

Q. Now I am asking you whether or not on that order there were these articles of keawe wood and bags and paper plates, and so forth, which were not eatables, when he gave it to you on the list?

A. Yes sir.

Q. What if anything was said to you at that time by Mr. Cunningham as to what was to be done

(Testimony of Lee Sau Chong.)

in the method of charging those articles, those non-eatable articles?

A. He tell me to have changed as vegetables.

Q. To have changed to vegetables?

A. Yes, according to what Mr. Miles——

Q. That Mr. Miles had told him to do that, is that what you mean?

A. Yes, to what Mr. Miles told Mr. Cunningham he want us to do that way.

Q. You took down the list did you? [528]

A. I took down from his list.

Q. What did you do with the list that you took down?

A. Give it to Mr. Monty, my bookkeeper.

Q. Was Mr. Monty your bookkeeper there at the time that Mr. Cunningham had given you the list, and did he hear what was said about making the changes?

A. Yes sir.

Q. This was all done in the presence of your bookkeeper.

A. Yes sir.

Q. Then, do you know what was done in the matter of making up that list finally by your bookkeeper? I show you United States Exhibit "G", which is the bill that was first sent out there on the September 1st order; did you personally have anything to do with the preparation of that exhibit, that writing there?

A. No.

(Testimony of Lee Sau Chong.)

Q. Who did make that?

A. Mr. Monty.

Q. Mr. Monty, your bookkeeper?

A. Yes sir.

Q. Now I'll ask you this, Mr. Lee Chong: Either at the time that the Mothers' Day order was placed, or at the time that the luau order was placed, or at any time when you were there when anything was said about making any of these changes, or any of these times, was Mr. Mookini present?

A. No.

Q. Did he have anything to do, for example, with the giving of this order for the luau dinner; did Mookini have anything to do with giving that order?

A. No; only Mr. Cunningham.

Q. I ask you this particularly in view of certain evidence which was given here by this man Deville, sitting in [529] front of you here, the Secret Service detective; he testified, as you may remember, that you had told him that Mr. Mookini and Mr. Cunningham had directed these orders?

A. No sir.

Q. You did not tell him that Mr. Mookini had directed making any of these changes?

A. No sir.

Q. Now, was there a time when Mr. Mookini did come in there, when Mr. Cunningham was there, if you can recall, and if they were there in connection with either of these orders?

A. No.

(Testimony of Lee Sau Chong.)

Q. Do you recall a time—you said he didn't have anything to do with the making out of the changed Mothers' Day bill, is that right?

A. Yes sir.

Q. Was this luau order of goods delivered?

A. On September 1st?

Q. September 1st.

A. Yes sir.

Q. Where?

A. That's the C. C. C. Camp truck come and get it.

Q. In other words, that was taken from your place of business by the C. C. C. truck?

A. Yes sir.

Q. You did not deliver this to the Camp grounds, is that right?

A. No.

Q. Now, Mr. Lee Chong, was anything said about this luau order or about changing the bill, or anything of that kind, at any later time; if so, when?

A. Changed on the September luau bill, you mean? [530]

Q. Yes; the bill as originally rendered was for $526.00, according to that exhibit there, and did not include in it or did not show on its face the keawe wood and those other things which had been delivered, as you say; now, do you recall a time when the matter of making a separate listing of those things came up?

(Testimony of Lee Sau Chong.)

A. That's in October 2nd or 3rd, Mr. Miles come to our office tell me and Mr. Monty——

Q. Just let me get the time. In other words, it was a month after these goods were delivered, about?

A. Around October 2nd or 3rd.

Q. Around October 2nd or 3rd Mr. Miles came in to see you, is that right?

A. Yes sir.

Q. Now tell us what happened then.

A. He want me and Monty to change that keawe wood and the cigarettes and cigars and chicken net wire—the bill was $72.50—as a separate bill.

Q. As a separate bill?

A. Yes sir.

Q. And who was present at the time that Mr. Miles came in there and asked you to place on a separate bill these various articles amounting to $72.50?

A. Mr. Monty.

Q. Just you and Mr. Monty and Mr. Miles?

A. Yes sir.

Q. That, you say, was about the 1st of October?

A. Around the 2nd or 3rd of October.

Q. Was a separate bill prepared, listing the wood and those other things, amounting to $72.50, separately?

A. I remember Mr. Miles ask us to change that as a separate bill, $72.50; that's all I remember.

[531]

(Testimony of Lee Sau Chong.)

Q. That he wanted you to change it to a separate bill. Did somebody change it, put it on a separate bill?

A. That time Mr. Monty have change that according to his order.

Q. Mr. Monty, your bookkeeper, at that time complied with his request and did make a separate bill, is that what you mean?

A. Yes sir.

Q. What if anything did you do with that bill on which there had been listed the wood, and so forth, separately?

A. I not quite understand you.

Q. Well, if I can lead a little bit: Do you remember, then, that you took the bill out to the Camp one day?

A. I remember I took the bill to the Camp around October 4th or 5th.

Q. October 4th or 5th you took the bill to the Camp?

A. Yes sir; that's the month of September bill, and statement.

Q. What bill did you take to the Camp?

A. I don't mean the bill—the statement.

Q. All that you have testified to as having happened at that time was that Mr. Miles came in and told you and Mr. Monty that he wanted to have these non-edibles listed on a separate statement, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Was anything said at that time, the first time, then, about changing them to the Canteen or any particular fund?

A. No.

Q. Just separate it, that's all?

A. Separate, that's all.

Q. I show you two documents, one being the United States [532] Exhibit "J", marked "C. C. C. Camp Canteen", and the other being a copy of the same bill except that it's addressed "C. C. C. Camp" without the word "Canteen" on it. I'll ask you to state which of those documents, if either one of them, were prepared when Mr. Miles first came in to you there and asked you to list this separately?

A. Mr. Miles asked me to separate on this one.

Q. Separate that one, that's the one you made out the first time he came in?

A. Yes sir.

Mr. ULRICH: First I'll ask for the original, if you have it, Mr. Moore, the one that's not marked "Canteen".

Mr. MOORE: How much is it for?

Mr. ULRICH: The same amount, $72.50. (Showing document.)

Q. I now show you the Government's Exhibit "J", and this other document, each for $72.50, one with the word "Canteen" on, the other without; and ask you which is the one which you prepared when Mr. Miles first came in to you?

A. This is the one (indicating).

Q. This one?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: I ask that this be received in evidence and given a separate number, if Your Honor please. This document has not yet been in evidence.

Mr. MOORE: No objection.

The COURT: It will be admitted.

(Marked "Defendants' Exhibit No. 1")

DEFENDANTS' EXHIBIT #1.

P. O. Box 1958 Telephone 5901

Honolulu, T. H., Sept. 1st, 1934

LEE CHONG COMPANY

Cor. Queen & Awa Streets, Aala Market

Groceries

"C. C. C. Camp" Schofield Barracks Upperpost

Oahu T. H.

The following articles in good order and condition.

Note: Please see that the articles are in good order and sufficient before signing this receipt.

Keawe Wood	$ 6.00
Chicken Wire	.50
Empty Bags	1.30
Rent for Chairs	2.00
Paper Plates, Napkin, Cups, Bowls and Spoons	37.80
Cigars and Cigarettes	10.40
Hawaiian Pudding	8.00
Flower Leis	6.50
	$72.50

[118]

(Testimony of Lee Sau Chong.)

Mr. ULRICH: Being a bill presented by Lee Chong Company, addressed to "C. C. C. Camp", dated September 1st, 1934, in the amount of $72.50, without any designation of "Canteen". I just want the jury to note the difference between these two exhibits at this time; the one which has heretofore been [533] in evidence is marked "C. C. C. Camp Canteen"; the witness has stated that is not the one first made out when Mr. Miles first came in to request a change. The other you will notice is "C. C. C. Camp" without the designation "Canteen" on it, and that, the witness has testified, is the one that was made out when Mr. Miles first came in and requested the change, the witness also saying that nothing was said about any particular fund at that first conference.

Q. Now, Mr. Lee Chong, when you went out to the Camp with this bill, did you take—and referring now to the defendants' Exhibit No. 1—did you take anything else with you on that 4th or 5th of October, as you say, any other statement covering the balance of the bill, for example, or did you only take the $72.50?

A. That day I went out—I remember now—it's not October 4th or 5th, that's October 11th or 12th; I bring this separate statement with the month of September statement.

Q. The month of September statement?

A. Yes, take it out to the Camp; and I did take it out to Mr. Miles, and Mr. Miles not in.

(Testimony of Lee Sau Chong.)

Q. Mr. Miles was not there. Just let me understand what you mean. You took a separate statement on which the total for the month of September was included, is that right?

A. The September——

Q. This was early in October when you went out there?

A. The month of September statement and this one.

Q. You took this on a separate sheet, as Mr. Miles had asked you to do, and you also billed for the total of the month of September on a separate bill, is that right? [534]

A. No; let me explain to you. This $72.50 statement was for the month of September statement; I took it out to the Camp around October 11th or 12th; and Mr. Miles was not in, so I met Mr. Mookini in the office, so I ask where is Mr. Miles, and Mr. Mookini told me Mr. Miles went to town; and I leave those two statements inside the envelope, I put it to Mr. Miles' desk.

Q. Now, just to get back to what I'm trying to bring out; this statement here was for $72.50, wasn't it, on that order?

A. Yes sir.

Q. Now, the separate statement that you made out and also presented at the same time, was that a statement for the whole month of September, do I understand?

A. Whole month statement.

(Testimony of Lee Sau Chong.)

Q. Of September?

A. September.

Q. Now then, as to this September 1st order listed on that statement for the whole month, did it or did it not include this $72.50, or was it for the balance over and above the $72.50 on the other statement?

A. On the other statement I don't remember sure the amount.

Q. All that you know is that you had this $72.50 on a separate sheet, and then presented the month's statement at the same time?

A. Yes sir, together.

Mr. ULRICH: It's ten o'clock, Your Honor; might we have a recess at this time?

The COURT: The Court will take a short recess.

(Recess—9:59 a. m. to 10:09 a. m.)

Mr. ULRICH: Mr. Lee Chong, you were testifying about a time [535] when you went out to the C. C. C. Camp with these two bills, that is, the $72.50 bill and the month's bill. Now I want you to try to recall just about when that was, again; you said one time, I believe, in checking over my notes, and another date; just about what date was it, as nearly as you can recall, that you went out and took those bills with you?

A. I remember it was around October 4th or 5th.

(Testimony of Lee Sau Chong.)

Q. You said it was around about the 2nd or 3rd of October when Mr. Miles first came in and asked to have the change made; so it was just a day after that?

A. Yes sir.

Q. On that occasion you did nothing but leave these bills out at the Camp; and Mr. Mookini was there; and you came away again?

A. Mr. Mookini was there; I asked for Mr. Miles.

Q. You were told that Mr. Miles was not there, and you left your bills and came away?

A. Yes sir.

Q. Later you got back and found that Mr. Miles had been at your place of business in the meanwhile, did you?

A. The same morning I came back I found Mr. Monty and Mr. McGregor there, and Monty told me Mr. Miles came.

Q. That he had been there?

A. That he had been there already; so he asked Monty——

Mr. MOORE: I object to what he told him.

Mr. ULRICH: No; we'll have Mr. Monty himself tell what happened when you weren't there, because you can't tell about what happened—I beg pardon; what were you going to say? You cannot tell what Mr. Monty told you had happened [536] while you were not there; we'll have to have Mr. Monty tell that for himself.

A. Oh.

(Testimony of Lee Sau Chong.)

Q. You merely found out that Mr. Miles had been in there while you were at the Camp?

A. Yes sir.

Q. Did there come a time when Mr. Miles again came in to see you about that bill, or something to do with the account of the Camp?

A. He came in the afternoon.

Q. Did he come in again after that?

A. Yes; same day.

Q. The same day Mr. Miles came in?

A. Yes sir.

Q. What did he have to say that same day when he came in the second time?

A. He asked for that bill, to put the "Canteen" on that $72.50.

Q. Showing you the Defendants' Exhibit 1, the statement of $72.50 without the word "Canteen" on it, which you've testified was the statement that you made out the first time and took out to the Camp?

A. Yes sir.

Q. Do I understand your testimony to be that when Mr. Miles came in the second time he wanted the word "Canteen" put on that bill?

A. Yes, put on that paper.

Q. And that was done then at his request?

A. Yes sir.

Q. And then Exhibit "G" was prepared, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. With the word "Canteen" on it?

A. Yes sir.

Q. What if anything was done, Mr. Lee Chong, after that [537] about paying this bill of your or these bills of yours?

A. Paying on the September bill?

Q. Yes.

A. That was around October 11th or 12th.

Q. And what happened then?

A. Mr. Miles bring down that September month 1934 check, come to our office, and I was in, and Mr. McGregor was in, and Monty was in.

Q. Along about the 11th or 12th Mr. Miles came in with the check?

A. Yes sir.

Q. To pay on the bill, and you were there, and McGregor was there, and Monty was there?

A. Yes sir.

Q. All right. Now tell us what happened?

A. I got his check, I look it over; it was not the same amount with the September bill.

Q. Not of the same amount; well, do you recall how much had been deducted before making out the check?

A. He didn't tell me deduct.

Q. How much less, how much short was the check of the amount that you should have gotten at that time according to the way your bills had been rendered?

A. About $110.15 on the September month.

(Testimony of Lee Sau Chong.)

Q. How was that made up?

A. Mr. Miles he deduct from that month of September statement, it was $110.15, account the bill $72.50 order——

Q. The $72.50 had been taken out, is that right?

A. Yes.

Q. What else had been taken out?

A. $37.65. [538]

Q. What did he say that $37.65 represented?

A. He say that $37.65 was the May bill, deducted from May bill.

Q. Deducted from the May bill?

A. Yes.

Q. Was that the first time that Mr. Miles or anyone had suggested to you that there should be any deduction made from the May bill?

A. No.

Q. When had he done it before?

A. He never done it before.

Q. Then, I am asking you, was that the first time that any suggestion had been made to you by Mr. Miles or anyone that any deduction should be made on account of the May bill or Mothers' Day bill?

A. Yes, that's the first time.

Q. So at that time he presented a check to you which was $110.15 short, being $72.50 representing the keawe wood, and so forth, on the luau bill, and $37.65, or whatever the amount was, that he then

(Testimony of Lee Sau Chong.)

for the first time wanted to deduct out of the May bill, is that right?

A. Yes sir.

Q. And the May bill had been paid?

A. Already paid.

Q. Well, what was said about deducting this $37.65 out of the May bill?

A. I ask him, "Why deduct; because everything delivered already on the May bill; you deduct—we don't know what it's for." And he say that was deduct by himself; he never let me know, he never let us know, and he just deduct by himself.

Q. Did you take and accept the deduction at that time?

A. No. [539]

Q. You refused to accept the deduction?

A. I refuse accept the deduction.

Q. Was there any conversation had at that time between Mr. Miles and Mr. McGregor who was with you there?

A. Yes sir. Mr. McGregor ask Mr. Miles, he say, "What about you folks talking about the $37.65?" So finally Mr. Miles explain it to Mr. McGregor and say that $37.65 is not eatable stuff on the May 12th days.

Q. Did Mr. Miles tell you how you were going to get your money, or whether you were going to get your money from any other account at that time?

A. Yes; he say that the Canteen going to pay us $72.50 or $37.65.

(Testimony of Lee Sau Chong.)

Q. What was said about the money by you?

A. I said that either the Canteen or the Camp, I don't know what the money he pay us, but anyway I know we deliver the goods and I expect he pay the full amount; if they got check from Canteen I want the check of the Canteen first.

Q. In other words, you said you didn't care how they paid, so long as they paid; that's the substance——

A. So long as they pay I don't care how they pay it.

Q. What was the outcome of that conversation? I understand you did not accept the check?

A. No.

Q. Did he go away with the check—Mr. Miles?

A. He keep the check with him, yes.

Q. Did you see Mr. Miles later on that same day?

A. Sam McGregor go up with me the same day, in the afternoon.

Q. The same day in the afternoon you went out to the Camp [540] with Mr. McGregor to see Mr. Miles?

A. Yes sir.

Q. Had you told him you were coming out there to have this thing straightened?

A. Yes sir.

Q. And when you got out there did you see Mr. Miles?

A. Yes; I go out with Mr. McGregor; at the same time Mr. Miles come in.

(Testimony of Lee Sau Chong.)

Q. Who, if anyone else, was there there at the conference or conversation that you had when you went out there that time?

A. Mr. Yates,——

Q. Mr. Miles had been removed at that time, and Mr. Yates had taken his place, is that right?

A. Yes sir.

Q. Mr. Yates was successor as Director of the Camp?

A. Yes; and Mr. Mookini.

Q. Mr. Mookini was there?

A. Yes sir; and myself, and Mr. McGregor.

Q. Now then, what happened?

A. We ask for the check of what Mr. Miles say is pay from the Canteen, which Mr. Miles say Mr. Colman handle that; so Mr. Colman not around the Camp; and that time Mr. McGregor tell Mr. Mookini make out the receipt, whenever we need that money, and that time we accept the check it was stated on the receipt as balance $110.15.

Q. So you did finally accept the check?

A. Yes sir.

Q. Was there prepared a paper at that time showing the balance that you claimed?

A. Yes sir. [541]

Q. And that was written—you heard Mr. Miles' testimony, I believe, in effect that that was written by Mr. Mookini on the typewriter, dictated by Mr. McGregor, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. That did happen that way?

A. Yes sir.

Q. I show you Exhibit "K", already in evidence in this case, and ask you if that is the document that was prepared at that time and signed by yourself, is that right?

A. Yes sir.

Mr. ULRICH: I don't know whether the jury have seen this before, or not (reading):

"Honolulu, T. H.
October 12, 1934.

"Received from the CCC Camp, Camp Directors Fund, Schofield, T. H., the sum of EIGHT HUNDRED TWENTY AND 13/100 DOLLARS. As partial payment of Account Rendered of $930.28 (Nine Hundred Thirty and 28/100 DOLLARS) leaving a balance due and unpaid in the sum of One Hundred Ten and 15/100 Dollars ($110.15), for September, 1934. $820.13

LEE CHONG CO.
Per LEE CHONG,
Manager.

Q. Did you have your carbon at that time certified to by any people; showing you a carbon copy of the document that has just been read to the jury?

A. Yes, this is the copy; Mr. Mookini.

Q. And whose signature is there?

A. Mr. Yates.

(Testimony of Lee Sau Chong.)

Q. Mr. R. M. Yates?

A. Yes.

Q. You had that for your own record, to show you had a witness you were still claiming this $110.15?

A. Yes sir. [542]

Mr. ULRICH: I am going to offer the copy in evidence, with Mr. Yates' signature, if I may.

Mr. MOORE: I have no objection.

The COURT: It will be received in evidence; please mark it.

(Marked—"Defendants' Exhibit No. 2")

Crim. #8518

DEFENDANTS' EXHIBIT #2.

Admitted.

Honolulu, T. H.
October 12, 1934.

Received from the CCC Camp, Camp Directors Fund, Schofield, T. H., the sum of EIGHT HUNDRED TWENTY AND 13/100 DOLLARS as partial payment of Account Rendered of $930.28 (Nine Hundred Thirty and 28/100 DOLLARS) leaving a balance due and unpaid in the sum of One Hundred Ten and 15/100 Dollars ($110.15), for September, 1934.

$820.13

LEE CHONG CO.

Per .....,

Manager.

(Testimony of Lee Sau Chong.)

Certified a true copy

ROBERT K. MOOKINI

Q.M. CCC Camp.

(In pencil) R. M. YATES.

[119]

Mr. ULRICH: I ask you, Mr. Lee Chong, if all these goods that you've listed here were delivered, actually delivered, of the reasonable value of the amounts that you charged for them?

A. Yes sir.

Q. All of this keawe wood, and so forth, on the bill for $72.50, was delivered, was it?

A. Yes sir.

Q. All of the remaining goods on the September 1st bill were delivered, were they; all of the remaining goods on the other of the two bills, after the items were segregated, were delivered, were they?

A. Yes sir.

Q. And, I believe, you've already testified that everything was delivered on the Mothers' Day bill as originally listed, excepting the oysters, which were flowers, is that right?

A. Yes sir.

Q. I asked you a few moments ago about your account with Mr. Mookini. I show you a book called "Customers Sales Journal", and to a page thereon where the name "Mr. R. Mookini" appears, and ask you if that is the account that was kept by

(Testimony of Lee Sau Chong.)

you for personal goods and merchandise delivered to Mr. Mookini?

A. Yes sir. [543]

Q. Calling your attention to the fact that it commences with the delivery on September 9th in the amount of $12.75, and ends with an item of October 7th of $1.65, being a bill in the total amount of $48.05; and I ask you if that is all that you ever charged to Mr. Mookini for groceries delivered to him?

A. Yes sir.

Q. That's the only account that you ever carried with him?

A. Yes sir.

Mr. ULRICH: I offer this in evidence.

Mr. MOORE: Did this man personally keep it?

Mr. ULRICH: Who kept this book?

A. Mr. Monty.

Q. That's not your handwriting?

A. No.

Mr. ULRICH: If you insist upon identification by the maker or writer, it will have to be done by Mr. Monty.

Mr. MOORE: I think that's the proper way, Mr. Ulrich.

Mr. ULRICH: Well, I offer it for identification at this time.

(Marked "Defendants' Exhibit A for Identification").

(Testimony of Lee Sau Chong.)

The COURT: At this time, before beginning the cross-examination, the Court wishes to state that, while the question of the exact dates of Mothers' Day and Labor Day may or may not become material, they have been referred to so often in this testimony that it would seem advisable at least that they should be determined. The Court has examined the calendar for the year 1934, and finds that the second Sunday in May, Mothers' Day, occurred on the 13th of May, that year, and that Labor Day, which is always the first Monday in September, occurred on the third day of September, 1934. By making this statement we will clarify the examination [544] and the record and also save considerable time should either of the parties desire to have this matter introduced in evidence, as either would have a right to do.

Mr. ULRICH: I think that counsel may agree on those dates, if Your Honor please.

Mr. MOORE: Oh, if the Court has looked them up, that's all I care for.

The COURT: Let the record show that respective counsel stipulate that Mothers' Day occurred on the 13th of May, 1934; and Labor Day on the 3rd day of September, 1934.

Mr. ULRICH: Mr. Lee Chong, do you recall any conversations that you had with Mr. Cunningham, or that Mr. Cunningham had with you at any time about Mr. Mookini—anything he said to you about Mr. Mookini?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. What do you recall that he said, and when did he say it?

A. Somewhere around or before May or June he say, "Mr. Mookini knowing too much about Mr. Miles."

Q. And what?

A. So he called Mr. Mookini—he said "that kanaka", if he start anything with Mr. Miles, he going to go jam Mr. Mookini up.

Q. Called him "kanaka" and said that if he started anything about Mr. Miles he was going to "jam him up", is that what you mean?

A. Yes sir.

Q. Now, Mr. Lee Chong, I just want to ask you another question: At any time during your negotiations with the C. C. C. Camp in connection with either the Mothers' Day order or the September order, or any other order, did [545] you know or have any idea about the particular fund that the money was to be paid out of in the Camp?

A. I did not know.

Q. Did you know, as a matter of fact, before the trial of the case whether the Canteen Fund was Government money or whether the Mess Fund was Government money?

(Testimony of Lee Sau Chong.)

A. No.

Q. You simply sent your bills to the C. C. C. Camp, is that right?

A. Yes sir.

Q. And sent the goods that they asked you to send?

A. Yes sir.

Q. And billed them the way that they told you to bill them?

A. Yes sir.

Q. Mr. Lee Chong, I show you a book in Chinese characters and ask you what it is.

A. That's the cash and payment book of Mr. Chun Yau Chee.

Q. Cash and payment book kept by Mr. Chun Yau Chee?

A. Yes sir.

Q. And Mr. Chun Yau Chee bore what relation to the Lee Chong company?

A. Yes sir.

Q. What did he have to do with the Lee Chong Company?

A. He was the boss.

Q. He was the boss when?

A. 1934.

Q. When this was kept, is that the idea?

A. Yes sir.

Q. This is in his handwriting?

A. Yes sir.

Q. You know his handwriting?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. And it is a record of what? [546]

A. The record of cash sales and paid out.

Q. Cash sales and paid out?

A. Yes sir.

Q. In other words, you mean cash received in the store and cash paid out over the counter or in the store?

A. Yes sir.

Q. Aside from the large orders that you might place?

A. Yes sir.

Q. Cash transactions?

A. Yes sir.

Q. I'll ask you, Mr. Lee Chong, whether or not the cash that was paid out for those flowers that were sent out to that Mothers' Day dinner appears in here?

A. May I take a look at it?

(Mr. Ulrich hands book to witness)

A. I saw one item, it's May 10th, pay out cut flowers $21.15.

Q. May 10th paid out for cut flowers how much?

A. $21.15.

Q. Now, did you have anything else that you were using flowers for at that time?

A. No.

Q. You had no occasion to decorate your store with flowers yourself, did you?

A. No.

(Testimony of Lee Sau Chong.)

Q. You didn't have any other banquet or any other place that you were sending the twenty dollars worth of flowers to, you didn't deliver flowers to anybody else, then, or did you?

A. No, never deliver to anybody.

Q. Now as to liquor; does this book show the purchase by Lee Chong Co. from time to time of alcoholic liquor?

A. You mean from January 1st? [547]

Q. Yes; anytime, anywhere. I'll just ask you to look in there, just for the purpose of showing what kind of liquor and how you bought liquor; an item there of March 8th, a case of beer for $2.75, does that item appear there?

A. Yes, March 8th, $2.75.

Q. March 21st, a case of beer for $2.15, does that item appear there?

A. Yes sir.

Q. And various other items in there, until we get to some wine on April 12th, is that right?

A. April 12th, yes, two dozen beer, $3.00.

Q. Do you see an item for wine on that same day there?

A. $2.50 for wine.

Q. And wine items on one or two other days there. Now, the nearest liquor that was purchased to May 12th, look at May 10th, "paid for liquor $3.75", do you see that?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Do you have any way of knowing whether that was wine or beer or some other kind of liquor?

A. I don't know.

Q. Those items before that were frequently listed as wine and beer; it might have been wine or beer?

A. What they write down as "beer" is beer; but this liquor is just "paid for liquor $3.75."

Q. You don't know what kind it was, and you have no way of telling?

A. No sir.

Q. On May 12th, that's Mothers' Day itself and on a Sunday, you have another liquor item there, haven't you?

A. Yes sir. [548]

Q. "Paid for liquor, 5 bottles, $9.60", is that right?

A. Yes sir.

Q. You don't know, or do you know what kind of liquor that was?

A. I don't know.

Q. As a matter of fact, what do you get liquor for at the store there?

A. If that's buying liquor or purchasing, all done by Chun Yau Chee himself.

Q. Yes, but what do you use the liquor for?

A. Sometimes we have liquors, some they use for our workmen, beer, like that, and wine.

Q. Wine, beer, and other liquor used for the men around the place, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Did you ever sell any liquor?

A. No sir.

Q. Never?

A. No sir.

Q. To anybody?

A. Yes sir, never.

Q. Never sold to anybody?

A. Never.

Q. Did you ever have any whiskey or gin bought there at your place?

A. No sir.

Q. If it was hard liquor, what kind of hard liquor did you buy or have about the place?

A. I remember during that time Chun Yau Chee had some Chinese liquor.

Q. What do you call that?

A. Ng Ka Pee.

Q. But can you definitely state that, to the best of your knowledge, there was never purchased by your store or [549] had about your place there any whiskey or gin?

A. Yes sir.

Q. By the way, these little pencil marks through here (indicating), whom do they belong to?

A. That's Captain Deville.

Q. Captain Deville, the gentleman sitting here with counsel?

A. Yes; he ask me if he can take pictures from this book.

Mr. ULRICH: I offer that in evidence.

(Testimony of Lee Sau Chong.)

Mr. MOORE: It wasn't kept by this man.

Mr. ULRICH: We can't prove it; the man who kept the book is not here. Where is Mr. Chun Yau Chee, the man who kept this book?

A. He went back to China.

Q. Do you recognize his writing in Chinese characters?

A. Yes sir.

Mr. ULRICH: I think that's sufficient basis for it.

Mr. MOORE: I have no objections.

Mr. ULRICH: Will it be received, Your Honor?

The COURT: Will it be of any value?

Mr. MOORE: I have no objection.

Mr. ULRICH: I don't think it's of great value, Your Honor, but it simply shows the custom so far as liquor is concerned; I think it has real probative value so far as the flowers are concerned.

The COURT: There being no objection by the Government, it will be admitted.

Mr. ULRICH: I want to show everything I possibly can, Your Honor, that's the idea.

(Marked "Defendants' Exhibit No. 3")

Mr. ULRICH: That's all. [550]

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. What's your business, Mr. Lee Chong?

A. My business?

Q. Yes.

A. I got no business.

(Testimony of Lee Sau Chong.)

Q. You got no business?

A. Yes sir.

Q. How do you make your living?

A. I work for Lee Chong Co.

Q. And you're the person that started that bnsiness, aren't you?

A. Yes sir.

Q. Your correct name is Lee Sau Chong?

A. Yes sir.

Q. And when did you start this Lee Chong Company?

A. 1932.

Q. And when did you sell it to this man Chun Yau Chee?

A. 1933, January 1st.

Q. January 1st, 1933?

A. Yes sir.

Q. What did you sell it to him for?

A. I owe him some money.

Q. You had been right there at the store ever since it started, haven't you, either as owner or manager?

A. I am manager now.

Q. And the only designation or you've only been designated "manager" since Chun Yau Chee took it?

A. Yes sir.

Q. And you have been manager ever since?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. You say that this book here is a record book —indicating Defendants' Exhibit 3—of receipts and sales for cash?

A. Yes sir. [551]

Q. Do you keep any books of the groceries you actually buy, that is, the vegetables?

A. I'm not keep the books.

Q. Well, are they kept there?

A. Chun Yau Chee, he keep all the books.

Q. Well, Chun Yau Chee, as I understand it, sold this place—what was it, the 1st day of May, or the 1st day of January, 1934?

A. You mean, that Chun Yau Chee keep the books?

Q. When did Chun Yau Chee sell this store or transfer it to somebody else?

A. Some time in June, 1934.

Q. You were the manager of this store, weren't you?

A. Yes sir.

Q. Well, did they keep any books of the produce they bought for sale?

A. Yes; Chun Yau Chee keep, himself, that time.

Q. Where are the books?

A. I don't know; he keep, his self.

Q. Chun Yau Chee sold the store and somebody else bought it; didn't he keep books of the products you bought?

A. That's Lee Kam You; he keep his books separate.

(Testimony of Lee Sau Chong.)

Q. He kept it separate?

A. That's belong to Lee Kam You.

Q. All right; that's kept there at the store?

A. Yes sir.

Q. And Mr. Roque, does he keep them?

A. Mr. Monty Roque, he keep sales for merchandise department and for the C. C. C. Camp books.

Q. That's the only books he keeps?

A. Yes sir. [552]

Q. Well, this second purchaser, is he named Lee Tin Yip?

A. Lee Tin Yip.

Q. And he's an uncle of yours, isn't he?

A. Yes sir.

Q. This Chun Yau Chee wanted to go to China, is that right?

A. Yes sir.

Q. And you had him transfer this to your uncle?

A. Not me transfer it to my uncle; Chun Yau Chee sold to my uncle.

Q. Isn't it the fact that you have run this store yourself, though, ever since it was started?

A. Yes sir.

Q. And you said, on this United States Exhibit "B", the only item on this that wasn't delivered is the oysters?

A. Every article is delivered except the oysters; that's the cut flowers.

(Testimony of Lee Sau Chong.)

Q. And you said that when they came down and told you—when you directed the change that billed the eatables for the flowers the only person there was Cunningham?

A. Yes sir.

Q. Mookini wasn't there at all?

A. No.

Q. Isn't it the fact, Lee Chong, that Mookini just about lived in your store while he was this Mess Officer out at the Camp?

A. Live in my store?

Q. He was in your store every single day, practically?

A. He not live in our store.

Q. Well, he was there practically every day, wasn't he?

A. No sir.

Q. How often did you see him in the week?

A. Once in a while. [553]

Q. Once in a while?

A. Yes.

Q. How often would you say, on an average, you'd see him in a week?

A. Can't tell exactly how often, but every once in a while Mr. Mookini come down the store.

Q. Just once in a while?

A. Yes sir.

Q. Did he go down there at lot of times and you set up the drinks and smokes for him?

A. No sir.

(Testimony of Lee Sau Chong.)

Q. Never did that?

A. Never give him drink; if I give him drink it's ice water or ginger ale, whatever he ask for, and give him cigar, like that.

Q. But you furnished ginger ale; what did he do with the ginger ale—just drink it straight?

A. Well, all he ask me is ginger ale and ice water.

Q. Did he use anything with his ginger ale?

A. I didn't see him use anything, only he ask me ginger ale and ice water, and that's all I gave it to him.

Q. And he drank it right there in the office where you were?

A. No.

Q. He took the ginger ale out?

A. He drink in the office, ginger ale, or sometimes ice water.

Q. Isn't it a fact that on a number of occasions he and Cunningham came down there and had drinks that you set up for them?

A. Pardon me?

Q. Many times did't he and Cunningham come down there together and you would buy the drinks for them?

A. No sir, I never did. [554]

Q. Didn't you buy drinks for this man Colman there by setting up—I don't mean that you went out and bought drinks, but you had the ginger ale and you furnished the booze?

A. Only few times Mr. Mookini bring some beer down to the office, and he drink, his self.

Q. He would bring beer and mix it with ginger ale, I suppose, to drink?

A. I don't know what he mix; I didn't see him mix.

Q. Where is this place here (indicating) that it talks about flowers?

A. May 10.

Q. And that is right over this column that has the initials of Mr. Deville?

A. Yes sir.

Q. Is there any Chinese number on any of these pages?

A. No.

Q. Can you tell what page it is?

A. No; that number is right over here; that's "10".

Q. Well, that's the date?

A. Yes sir.

Q. What did you say the amount of those flowers was?

A. $21.15.

Q. Now read us verbatim, that is, exactly what this says.

A. "Paid cut flowers $21.15."

Q. And you say that's the only thing that you wanted flowers for at that particular time, was to take them out to this Camp at Schofield, that's what you wanted these flowers for?

A. Well, during that time Chun Yau Chee purchase.

(Testimony of Lee Sau Chong.)

Q. Yes, but that's what the flowers were for, to take out to the Camp, is that right? [555]

A. Yes sir.

Q. And that's the only thing at that time you wanted flowers for?

A. Yes sir.

Q. Did you purchase these flowers yourself?

A. No.

Q. Have anything to do whatever with purchasing them?

A. No sir.

Q. Did you tell anybody to purchase them?

A. That time it's Mr. Chun Yau Chee do all the purchase.

Q. Did you tell anybody to purchase these flowers?

A. No.

Q. Well, how did they happen to purchase them, then, if you know?

A. Well, Mr. Cunningham tell us to have that flowers only for Mothers' Day; I take his order, I hand it to Mr. Monty, he makes the bill, and he tell whoever was to purchase, like Mr. Chun Yau Chee, he handle that.

Q. Well, then, you did tell somebody to go purchase flowers?

A. Yes sir.

Q. Now, do you remember having a conversation with Mr. Deville on October 27th at about 1:25 p. m.?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. And he was talking to you about these flowers?

A. No; he ask me to have this book, he want to take picture of it at that time.

Q. Well, did he ever ask you about flowers?

A. Yes sir.

Q. Did you point out to him these flowers, or did the Chinese boy that was with him pick those out?

A. Mr. Tom, the Chinese interpreter.

Q. Immigration interpreter? [556]

A. Immigration interpreter.

Q. You never talked to Mr. Deville at any time about these flowers, is that right?

A. I never talk about the flowers to Mr. Deville, you say?

Q. That's what I'm asking you: Did you ever talk to him about these flowers?

A. He ask me about the Mothers' Day bill; I did tell him that cut flowers in the place of oysters.

Q. You told him that?

A. Yes sir.

Q. And just what did you tell him? Give us the words, the best of your recollection of what you told him about flowers at that time.

A. I tell him Mr. Cunningham had an order from Mr. Miles to have that cut flowers put it in as oysters, because the cut flowers is not eatables.

Q. Now, didn't you tell Mr. Deville on that day, when you were discussing these flowers, that

(Testimony of Lee Sau Chong.)

Cunningham and Mookini came to your store and told you that they wanted to get some flowers?

A. No sir.

Q. And didn't they tell you to charge it up as some eatables?

Mr. ULRICH: Just a moment. I would like these questions intelligible. Do I understand you're asking whether they said it separately or in unison?

Mr. MOORE: When the two of them were there.

Mr. ULRICH: They both together obviously couldn't talk at the same time.

Mr. MOORE: And, in the presence of both of these men, didn't one or the other tell you to get these flowers and charge them up as eatables? [557]

A. Only Mr. Cunningham.

Q. Wasn't Mr. Mookini there?

A. No.

Q. And you never told that to Mr. Deville; you never said that the two came down there and in the presence of both of them, that one of these men, that's either Mookini or Cunningham, told you to get these flowers and charge them as eatables?

A. Not Mookini; Mr. Cunningham.

Q. What I'm asking you is this; not whether you said that or whether Mookini or Cunningham said that, I'm asking you whether you told Mr. Deville that while these two men were there one of them told you to get flowers and charge it as eatables?

(Testimony of Lee Sau Chong.)

A. I did not tell Mr. Deville whether Mr. Cunningham or Mookini.

Q. You didn't tell Mr. Deville that?

A. I did not tell him that.

Q. Didn't you tell Mr. Deville that the flowers amounted to $23.75?

A. No sir.

Q. Didn't you tell Mr. Deville that the items of strawberries and oysters made up that item of $23.75, that is, $17.50 for the oysters and $6.25 for the strawberries?

A. No sir. May I explain that, Mr. Moore?

Q. Sure.

A. From that time when I came back from Hilo, Mr. Deville come down the store, once in a while he come down the store, he point me out the picture of May bill and he tell me, he say, "Mr. Lee Chong, did you remember that strawberries [558] was not deliver, or pumpkin not deliver?" I say, "No"; I say, "Captain, you show me that invoice of the May 12th bill, 1934, I told you time to time every article is deliver except the oysters, according to Mr. Cunningham and Mr. Miles order me to change it as oysters on account cut flowers is not eatables."

(Recess—11:00 a. m. to 11:10 a. m.)

Mr. MOORE: Now, when Cunningham asked you to list these as something else, that is, the flowers, you say he told you you would have to list them as food?

(Testimony of Lee Sau Chong.)

A. Mr. Cunningham told me that these cut flowers not eatables, that's all I know; he say Captain Miles was order him to tell me to charge as oysters.

Q. Didn't you think when they told you that they couldn't charge these, that was an illegal charge to make those as flowers?

A. No sir.

Q. You didn't think that at all?

A. He never tell me that.

Q. Well, are you in the habit of listing groceries as something that they are not?

A. Pardon me?

Q. Do you make a habit of listing groceries as building blocks or something that they don't represent?

A. All he call out on his list I mark down on my paper and turn it to Mr. Monty to take care of that and make out the bill.

Q. And you say that Cunningham instructed you to list them as oysters?

A. Ordered by Mr. Miles. [559]

Q. Well, Cunningham is the man that told you, though?

A. Yes sir.

Q. Well, how do you account for the fact, Mr. Lee Chong, that your cash there in the book for flowers is $21.15 and the oysters are only $17.50?

A. Mr. Cunningham ask me, account Mothers' Day bill was a big order, he ask me for donation for

(Testimony of Lee Sau Chong.)

flowers to the Camp, which we did supply that Camp with $17.50 worth of cut flowers, the balance was donation to the Camp, account of Mothers' Day.

Q. That was a personal donation by Lee Chong Company?

A. Yes sir.

Q. Did you talk to Chun Yau Chee about this?

A. Yes sir.

Q. And he told you that would be all right?

A. Yes sir.

Q. And Chun Yau Chee is back in China now?

A. Now, yes.

Q. Now, showing you United States Exhibit "G", this is the exhibit on which the delivery was made on September 1st, isn't it?

A. Yes sir.

Q. And there's no keawe wood, cigarettes or cigars, netting, or sacks, or chairs, or paper cups, or anything like that on there, is there?

A. That's the one Mr. Cunningham tell Mr. Monty to change as vegetables.

Q. You heard Mr. Cunningham tell him that?

A. Yes sir.

Q. And Mr. Mookini wasn't there?

A. No. [560]

Q. Now, didn't you tell Mr. Deville here, during this investigation, that Mookini and Cunningham came in and told you to change these things to eatables, otherwise they couldn't be paid for?

A. Not Mr. Mookini; Mr. Cunningham.

(Testimony of Lee Sau Chong.)

Q. You didn't tell Mr. Deville that Mookini and Cunningham were there?

A. I did not tell to Mr. Deville that Mr. Mookini was in there.

Q. Now, 25 pounds of California yams were not delivered, were they? There's 50 pounds listed; 25 pounds were not delivered, were they?

A. We had papers, memorandum made out whatever is deliver, whatever is charge as vegetables; Mr. Ulrich has it.

Q. I'm asking you, were the whole amount of those 50 pounds of yams delivered?

A. I would like to have that memorandum, then I can tell whatever is not deliver and whatever is deliver; that time it's changed already.

Mr. ULRICH: Do I understand the witness can't testify from his independent recollection and wants to refresh it from some memorandum? I don't imagine he could, very well.

Mr. MOORE: Have you got one that's supposed to be in evidence?

Mr. ULRICH: Here is one (handing document to Mr. Moore).

Mr. MOORE: There's only 25 pounds of yams in that list, isn't there; that's referring to United States Exhibit "H"?

A. Yes sir.

Q. Then the 50 pounds here that's listed as delivered were not delivered; only 25 pounds of it?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. And again reading from Exhibit "G"; the six cases of [561] honey dew melons listed here at $15.00 were not delivered either, were they?

A. What you say?

Q. Six cases of honey dew melons?

A. (After inspecting document): No.

Q. Nor 300 pounds of pumpkin?

A. No.

Q. Nor 10 pounds of dried mushrooms?

A. No.

Q. Nor 15 gallons of mayonnaise?

A. No.

Q. And you knew when these items were delivered, that is, the items listed on Exhibit "G", that this statement was not correct, didn't you; that's the one with the pumpkin, the honey dew melons, the mushrooms, and the mayonnaise on it?

A. That's what Mr. Cunningham ask us to change.

Q. Yes, but you knew when these goods were delivered that this statement about those goods was not correct as it did not truly list the articles actually delivered?

A. These goods on September 1st, we make out the list, one to us and one for the Camp, whatever they take the goods from our store, and they check it off.

Mr. MOORE: I'll ask that the answer be stricken as being not responsive.

(No ruling.)

(Testimony of Lee Sau Chong.)

Q. What I am asking you is this: You knew at the time, that is, on September 1st, that this bill, which is United States Exhibit "G", was not correct as setting forth what was actually delivered?

A. Well, this bill is made out and totaled by Mr. Cunningham and Mr. Monty. [562]

Q. I understand; but you knew at that time that this bill did not correctly list the articles delivered, didn't you?

A. I don't know; that's after they change.

Q. After they changed—this is the change here (indicating)——

Mr. ULRICH: I think the witness probably doesn't understand the question.

Mr. MOORE: You had already sent back—you said that you knew the changes had been made?

A. These are changes made around October 2nd or 3rd that Captain Miles asked to change.

Q. At the time these goods were delivered, as listed upon United States Exhibit "G", you knew that the items of 25 pounds of California yams, 6 cases of honey dew melons, 300 pounds of pumpkin, 10 pounds of dried mushrooms, and 15 gallons of mayonnaise, covered those items for the luau such as keawe wood in that list making up $72.50; you knew that, didn't you?

A. These changes I don't know; between Cunningham and Monty.

Q. You knew that this list did not correctly state what was actually delivered, didn't you?

(Testimony of Lee Sau Chong.)

A. This invoice, all I know the changed total Mr. Cunningham tell Mr. Monty to change that; I didn't take look at it before I deliver this bill to the Camp.

Q. Then it's correct, that before this bill was made out, according to your testimony, Mr. Cunningham in your presence stated that these items of keawe wood and all that stuff, making $72.50, was to be charged as something else?

A. At that time I'm not in; this bill I delivér to Camp after one or two day, in September; Monty make out this bill and I deliver to the Camp. [563]

Q. You delivered this bill to the Camp?

A. Yes; accountant that time was busy.

Q. Didn't you tell us on direct examination that, on this September 1st bill, Cunningham came in to the Lee Chong Company down here at the Fish Market and told you and Monty that these luau items, which amounted to $72.50 and are listed on United States Exhibit "J", were to be charged as eatables or foodstuffs?

A. Mr. Cunningham give us orders——

Q. Did you state that on direct examination, or didn't you?

Mr. ULRICH: The witness has a right to explain his answer, if the Court please.

Mr. MOORE: It's an answer that called for "yes" or "no", and there don't have to be any explanation about it.

Mr. ULRICH: We all know what he testified to about on direct examination; whether you have

(Testimony of Lee Sau Chong.)

given him a correct paraphrase I don't know myself. If he wants, let him state what is the fact and restate the subject matter. I couldn't tell you exactly what he said on direct examination even now. I submit he has a right to give the substance of what he wants to say, whatever really happened.

Mr. MOORE: I submit, may it please the Court, the cross-examination is proper and the manner of its conducting should be in the discretion of the plaintiff at this time.

The COURT: What we're concerned about is getting the actual facts.

Mr. MOORE: Yes, Your Honor.

The COURT: The Court will permit the witness to explain what the facts were. [564]

Mr. MOORE: Very well.

Q. Will you tell us at this time how these items listed on United States Exhibit "J" were covered on the voucher that was given at the time of the delivery of the goods?

A. This September 1st statement was change somewhere around the October 4th or 5th; Mr. Miles come in and have that change as "Canteen", $72.50

Q. Originally this amount, as shown you in Exhibit "J", for $72.50, together with the amount listed on United States Exhibit "H" in the sum of $454.10—just look at the totals for a minute and maybe you can follow this—amount to five twenty six, the amount of this bill which is United States Exhibit "G"——

The COURT: Is that $5.26, or $526.00?

(Testimony of Lee Sau Chong.)

Q. $526.60; these two add up to this, don't they?

A. Yes sir.

Q. Now, what I am trying to have you tell me is how you happened to put the items in this bill, which is United States Exhibit "J", as something else in Exhibit "G"?

A. I remember this September 1st bill $526.60; after Mr. Monty make this bill, I was take it out to the Camp around October 4th or 5th—no, in September, one or two days later.

Q. Did Mr. Cunningham tell you to list those items in United States Exhibit "J", which are the keawe wood, and so forth, that make up $72.50, as eatables?

A. Not Cunningham; that's Mr. Miles.

Q. What?

A. Mr. Miles tell Monty to make out that. [565]

Mr. ULRICH: I think the witness is being confused, if Your Honor please, by reason of the fact that his attention is being constantly directed to an exhibit which was not in existence at the time the original bill was presented: I think if you would direct your question—maybe an interpreter would be better—but if you'll directed his attention to the first time anybody placed an order for the luau bill, he'll not have in mind this subsequent bill, and the confusion will be removed.

Mr. MOORE: As I recall, when you were questioning him you had the same bill and showed it to him.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: Oh yes, but not in connection with the first exhibit; it wasn't in existence at the time they first made out the bill.

Mr. MOORE: When Mr. Cunningham, according to your testimony, went down to your store, about September 1st, he had a list with him, is that right?

A. Yes sir.

Q. And you sat down there with pencil and paper and he called the items off this list?

A. Yes sir.

Q. And you wrote these items down?

A. Yes sir.

Q. Did the items that he called off include keawe wood——

A. Yes sir.

Q. And chicken wire?

A. Yes sir.

Q. And empty bags?

A. Yes sir.

Q. Chairs?

A. Yes sir.

Q. Paper plates, napkins, cups?

A. Yes sir.

Q. Bowls, spoons?

A. Yes sir.

Q. Cigars?

A. Yes sir. [566]

Q. Cigarettes, Hawaiian pudding, and flower leis?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Now, was anything said by Cunningham at that time as to how those articles were to be charged?

A. Nothing said to be changed, to be charged at that time.

Q. Nothing said at that time?

A. Not changed.

Q. Now let's get this correct. At the time the order was given by Mr. Cunningham for September 1st, he gave you a list of groceries, and in addition to that he gave you this list which is included in this exhibit, which is Exhibit "J", is that right?

A. Yes sir.

Q. And nothing was said as to how they were to be billed?

A. Let me explain to you, Mr. Moore. He give this September 1st order around August 30th, and I take the order from his list; he call to me, I mark it down on piece of paper and I turn over to Mr. Monty to place the order and price and make out the bill; just this change, that's between Mr. Cunningham and Monty—I was not in.

Q. In other words, you don't know how they happened to put these items of 25 pounds of yams, 6 cases honey dew melons, 300 pounds pumpkin, 10 pounds dried mushrooms, and 15 gallons mayonnaise, on this bill; you don't know how they happened to do that?

A. Until later.

Q. That's referring to United States Exhibit "G". When did you first find out about it?

(Testimony of Lee Sau Chong.)

A. Around October 2nd or 3rd Mr. Miles come down and ask for separate that statement. [567]

Q. You don't carry keawe wood, do you?

A. No sir.

Q. You don't carry chicken wire, do you?

A. No sir.

Q. You don't carry chairs, do you?

A. No.

Q. You don't carry flower leis, do you?

A. No.

Q. You don't carry Hawaiian pudding?

A. No.

Q. Cigars or cigarettes?

A. We carry that.

Q. You do carry that?

A. Yes. Let me explain——

Q. You don't carry these paper cups or empty bags?

A. We had empty bags.

Q. That's when you get onions and potatoes and stuff like that, you save the bags out and do have those?

A. No; we buy those empty bags.

Q. What did you want to explain?

A. The keawe wood we was buying that time; myself and Mr. Miles' cousin buy that from the Depot over there.

Q. That's the Oahu Railway Depot?

A. Yes sir; I got receipt for that.

(Testimony of Lee Sau Chong.)

Q. You went out and bought that yourself, personally?

A. I go out with Mr. Miles' cousin; whatever he say, I buy from the Depot over there, and I pay him cash for that. And those pudding, Mrs. Miles order the pudding right in the Oahu Market over there.

Q. And charged it to you?

A. Charge to me, and I pay for it. And the chicken net wire, sometimes Mr. Miles personally go with me and buy from Japanese store.

Q. And you paid for that?

A. Yes sir.

Q. How about these chairs? [568]

A. These chairs, rented those chairs from a Chinese on River Street; he is put up Chinese parties for somebody have party like that; we rent it from him.

Q. You rented them?

A. Yes.

Q. You paid the rent for the chairs?

A. Yes sir.

Q. How about these paper plates and napkins, and so forth?

A. All come from Honolulu Paper Company.

Q. And you bought that?

A. They sent it to us, for the C. C. C. Camp truck take it, two or three times.

Q. You paid for those?

A. We pay for those; we charge just the same.

Q. You mean, you charged the C. C. C. Camp the same amount that you paid for them?

A. Yes.

(Testimony of Lee Sau Chong.)

Q. Did you deliver this stuff?

A. No; the C. C. C. Camp truck come and get it.

Q. Who came in on the C. C. C. truck to get it; Mr. Mookini wasn't there, was he?

A. Mr. Cunningham; and that morning the Camp truck driver come and get it.

Q. Mr. Mookini wasn't there?

A. Mr. Mookini he come in that morning too.

Q. On the truck?

A. On the truck.

Q. And on this Exhibit "G", which is your receipt for the store, Mr. Cunningham signed that?

A. I deliver these later, one or two days, account busy; Monty make out these and he had list all ready whatever he get checked from the store, and he check over and he take it up to Mr. Miles. [569]

Q. In other words, when these goods were actually taken out of the store there was no bill made out for it?

A. At that time didn't make no bill.

Q. And Mr. Cunningham and Mr. Mookini were there at the time they were delivered?

A. That morning the C. C. C. Camp truck come and get it.

Q. And Mr. Mookini and Mr. Cunningham were on the truck?

A. Mr. Cunningham on the truck with his driver.

Q. Where was Mr. Mookini?

A. I don't remember sure Mr. Mookini in or not.

Q. A little while ago you said he was there; was he, or wasn't he?

(Testimony of Lee Sau Chong.)

A. The C. C. C. Camp truck with the driver; Mr. Cunningham was there.

Q. But, to the best of your recollection, Mr. Mookini was not there?

A. I don't remember sure he's there or not.

Q. Didn't you know that Mr. Mookini was the Mess Officer out there?

A. All I know he's officer of the Camp.

Q. Well, didn't you know he had charge of the buying?

A. I don't know he's in charge of the buying.

Q. Didn't he ever tell you that he was the Mess Officer and that he was the one that bought the food?

A. He didn't tell me that.

Q. Never did?

A. No, he never tell me he's doing the buying.

Q. Whom did you think was the buyer—Cunningham?

A. Mr. Miles and Cunningham. [570]

Q. Didn't Mookini ever come down to your store?

A. When?

Q. Any time during this period?

A. Once in a while Mr. Mookini come down.

Q. Didn't he ever give you any orders—Mookini?

A. Orders, most of them, Mr. Cunningham.

Q. Didn't Mookini ever give you any orders for goods to go to the C. C. C. Camp?

A. By telephone?

(Testimony of Lee Sau Chong.)

Q. By telephone, or any way?

A. The first time around April, 1934; since that time I see him, sometimes he give us order by telephone.

Q. That is, Mookini?

A. Yes sir.

Q. Did he ever come personally down to the store to give you an order?

A. I remember only sometimes he come down and give order.

Q. Well, he gave orders, then, at times, too?

A. Yes; with Mr. Cunningham together.

Q. What's that?

A. When he come down with Mr. Cunningham together.

Q. When the two of them came together, Mookini gave the orders, is that it?

A. If he come together, Mr. Cunningham did give orders.

Q. Well then, the only times he did give orders to you was when he came down alone or in the absence of Mr. Cunningham?

A. He didn't give me any orders by his self.

Q. Well now, here a moment ago you said that when they were together Mr. Cunningham gave the order, and now you say that he never gave you an order by himself?

Mr. ULRICH: No, he didn't say anything of the kind. [571]

Mr. MOORE: He said he did give him an order once in a while when he was down by himself.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: He said, when Cunningham was there—I don't see any discrepancy—Cunningham would give the order.

Mr. MOORE: Did Mookini come down any time by himself and give you an order for food out there?

A. No.

Q. Never did?

A. Never.

Q. And, each time when he came with Cunningham, Cunningham gave the orders?

A. Yes sir.

Q. Just when did Mookini give these orders?

A. I cannot remember exactly the days, only sometimes, maybe it was order by phone, that's what I remember.

Q. But Mookini never gave you an order personally at the store, is that right?

A. Yes sir.

Q. And all your dealings with Mookini with reference to the Civilian Conservation Camp for food was over the telephone?

A. I remember that.

Q. That is, the only business that you ever did with him in that connection was over the telephone, is that right?

A. Yes sir.

The COURT: Can you finish by noon, Mr. Moore?

Mr. MOORE: No, Your Honor, I cannot.

The COURT: Then the Court will adjourn at this time. Gentlemen of the jury, you will be ex-

(Testimony of Lee Sau Chong.)

cused until nine o'clock tomorrow morning. Remember the admonition given you about discussing this case with anyone or permitting anyone else to talk to you about it; also, refrain from [572] making up your minds until you've heard all the testimony and the arguments of counsel. The jury will be excused.

(Adjourned—11:42 a. m.)

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Tuesday, May 21st, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll also so stipulate.

The COURT: Let the stipulation be entered.

LEE SAU CHONG resumed the witness stand, and under continued Cross-Examination by Willson C. Moore, Esq., testified further as follows:

Q. On this May 12th voucher, referring now to United States Exhibit "C", you're sure this 400 pounds of pumpkin was delivered? [574]

Yes sir.

(Testimony of Lee Sau Chong.)

Q. And the only item on there that wasn't delivered is the oysters?

A. Yes sir.

Q. You see those initials down at the bottom of that document?

Yes sir.

Q. Do you know whose those are?

A. You mean these in here (indicating)?

Q. That's it.

A. Mr. Cunningham.

Q. And this appears to be a receipt for some goods your Company delivered to the Civilian Conservation Camp, is it not?

Mr. ULRICH: I think I might as well just get a ruling on this, if Your Honor please, at this time. Apparently now counsel is commencing to examine him on vouchers covering other and different transactions. What date is that?

Mr. MOORE: May 1st, May 16th, and May 29th.

Mr. ULRICH: Now I suggest to the Court the objection that this can go on indefinitely; we've already, I think, occupied more time than any of us anticipated in the trial of this case, and if this witness can now be examined on all of his transactions with the Camp or on three or four, even, of those, and taken through the various items, there is no limit to the extent that the examination may reach; and I submit that what happened on these other occasions is not relevant and material. For what it's

(Testimony of Lee Sau Chong.)

worth at this time, I submit the objection, if Your Honor please, that it's irrelevant, incompetent, and immaterial what he delivered on May 1st, and that any cross-examination as to matter which had no part in the direct examination at all, aside from being improper cross-examination, deals with [575] incompetent, irrelevant, and immaterial matter.

The COURT: What is the purpose, Mr. Moore?

Mr. MOORE: The purpose is this, may it please the Court; it's to show that during the month of May about 950 pounds of pumpkin was delivered out there, and he claims that this 400 pound item was delivered on the 12th, and it shows that four days later there was 200 pounds more, showing it is positively ridiculous that any outfit could use half a ton of pumpkin.

Mr. ULRICH: (Argument).

The COURT: Is it claimed that these items are false and fictitious?

Mr. MOORE: No, Your Honor. It is claimed by the Government that the item of 400 pounds of pumpkin upon the voucher of May 12th is false and fictitious; and there are besides that four other purchases of pumpkin in that month, one of them being within the period of four days of the 12th showing that first order and the last order of about 150 to 200 pounds apiece, and here within this four days is about six or seven hundred pounds. It goes to show, may it please the Court, that that item of 400 pounds of pumpkin as alleged by the Government on May 12th is false.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: (Argument).

Mr. MOORE: May it please the Court, this is one of the defendants; the scope of the cross-examination with reference to a defendant is far different from the scope of an examination of a witness; and when the thing directly bears upon a certain thing which is the very essence of this offense, we submit it is proper, relevant, and material. [576]

The COURT: In the view of the Court, it would only be so if it touched the credibility of this witness.

Mr. MOORE: Well, of course it would go to his credibility in addition to that.

Mr. ULRICH: (Argument).

The COURT: The objection is sustained. "Peter, Peter, pumpkin eater", may have been out there.

Mr. MOORE: You told me yesterday that on this September 1st bill, when they came in and ordered these goods for the luau, that Mookini was not there, is that correct?

A. Mr. Cunningham he give me the order on that September 1st.

Q. You told me, did you not, though, that Mookini was not there on September 1st when that order was given?

A. Mookini not there.

Q. Mookini was not there; you're sure about that?

A. Yes sir.

Q. You know this man McGregor, don't you?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Now, don't you remember a conversation where you were present, Mookini was present, Cunningham was present, and McGregor was present, and McGregor was telling Mookini and Cunningham the quantities they needed for a luau?

A. What do you mean—conversation with Mookini?

Q. A conversation at your store, the Lee Chong Co. down there, where these four men were there, and McGregor was telling them that they had too much of this and not enough of this for the luau that they were going to give?

A. I remember that September 1st; around August 30th Mr. Cunningham place the order for September 1st. I misunderstand you yesterday; that time Mr. Cunningham place [577] that order he had a list in his hand, and he call out that articles to me, and at the same time Mr. Monty and myself, and Mr. Cunningham in there was giving order to me, and I mark down on the paper, and I turn it over to Monty; at the same time he told me and Monty to have change those chicken net wire and keawe wood and cigarettes and cigars for $72.50.

Q. Your memory is better on that this morning than it was yesterday, is that right?

A. I was trying to remember yesterday afternoon, and realize that change when Monty and myself and Cunningham were there.

(Testimony of Lee Sau Chong.)

Q. Did you talk to anybody about that particular thing since yesterday when you were on the stand?

A. Couldn't understand you.

Q. Did you talk this thing over that you said you made a mistake yesterday, have you talked about that thing since you left the stand yesterday, with anybody?

A. No; I try remember myself; I'm not talking to anybody.

Q. You didn't say a word to Roque?

A. No.

Q. Or you didn't say a word to Mookini?

A. Never talk to him.

Q. How about this conversation I have just brought to your attention, when this fellow McGregor was there; what's your recollection on that now?

A. What time that?

Q. When this luau order was placed.

Mr. ULRICH: Now I object to the question; apparently he's talking about a different conversation. The witness has already testified that when the order was placed there was nobody there but Cunningham and he and his bookkeeper. Now he's talking about another time when he's suggesting [578] to the witness there were quite a number of people there, McGregor, Mookini, and the witness, and the bookkeeper, and so forth. I want the ques-

(Testimony of Lee Sau Chong.)

tion distinct, because the witness does have some difficulty understanding; he's Chinese; he speaks English for all reasonable purposes; but I think we should perhaps be a little more insistent than in an ordinary case that the questions be definite.

The COURT: Lee Chong, if you don't understand the question, say so.

A. Yes sir.

Mr. ULRICH: I ask that this witness be directed to a definite time when certain definite people were present, and if he recalls it, very well; but don't confuse it with the time when the order was placed, as he's already testified to that and cited a different set of people.

Mr. MOORE: Did you ever have a conversation or were you ever present at any conversation just prior to this delivery of the luau order, that is, a day, or two or three days, where McGregor, yourself, Mookini, and Cunningham were present talking about the items necessary to give a luau?

A. In the September 1st order, you mean?

Q. Just prior to the time, yes.

A. Mr. McGregor not there; only Mr. Cunningham and Monty and myself; it was around August 30th he place that order; September 1st the C. C. C. Camp truck come in get the goods.

Q. Then you deny that McGregor and Mookini and Cunningham were ever present in your store having a conversation about these luau items for the September 1st bill?

(Testimony of Lee Sau Chong.)

Mr. ULRICH: Let me ask you that that be directed to before [579] September 1st, or at some later time.

Mr. MOORE: Before September 1st.

A. I remember that Mr. Cunningham and myself and Monty were taking his order around August 30th.

*Q. That isn't the question I asked you. I asked you whether or not you deny that a conversation with reference to these luau items that were delivered on September 1st was had at your store prior to their delivery, in which Mookini, Cunningham, McGregor, and yourself, were present; is that true, or isn't it?

A. That I don't remember.

Q. Will you deny that that took place?

A. I don't understand "deny".

Q. Will you say that it did not take place?

Mr. ULRICH: If Your Honor please, I submit that question as asked—very often we have the frame of mind, all of us, where we can't say definitely whether a certain conversation took place at a certain time with a certain group of people. These people have been in various conversations at various times; the witness says he can't say definitely whether there was a group together before that time, and I submit his answer should be taken. He said he would not deny or would not affirm.

Mr. MOORE: He said no such thing.

Mr. ULRICH: I understood him to so testify.

(Testimony of Lee Sau Chong.)

Mr. MOORE: He didn't say he wouldn't deny or wouldn't affirm. He's very specific as to Mr. Cunningham, but with reference to anyone else with reference to this particular order his memory, for some reason, has failed him. [580]

Mr. ULRICH: Oh no; that's a very wrong statement.

Mr. MOORE: We're entitled to have him either admit or deny.

The COURT: The Court understood him to say he didn't understand the question; apparently the word "deny" bothered him, that's the impression the Court got. Call the interpreter and try to have him help you, Mr. Moore.

(Reported reads question, marked *, page 350) [Printed Record page 603] (Interpreted)

A. (Through Chinese Interpreter): I cannot remember correctly.

Q. (Through Chinese Interpreter): Would you deny that that took place?

A. I cannot remember whether there was such a conversation or not.

Q. But you do remember distinctly that Cunningham came in there all by himself and gave you this order and told you to charge the wood, the wire, the bags, the chairs, the paper cups, the leis, the cigars and cigarettes, as eatables?

A. Yes, I did.

(Testimony of Lee Sau Chong.)

Q. What makes your memory so good on that?

A. Well, it was my duty to remember those orders.

Q. And you don't remember telling Mr. Deville here, during the month of October, that when that order for the September 1st bill was given to you, Cunningham and Mookini were both there?

A. I told Mr. Deville that Cunningham was the one that came in to give the order.

Q. Will you deny that you told Deville that both Mookini and Cunningham were there at that time?

A. Only Cunningham was there, not Mookini.

Mr. MOORE: May it please the Court, I'll ask that the answer be stricken and the witness be instructed to answer the question. [581]

The COURT: Explain to him, Mr. Interpreter, that he's not now being asked who was there, but what he told Mr. Deville about it.

A. I deny that.

Q. You're absolutely sure that that wasn't so?

A. Yes.

Q. But you're not sure about this conversation that I spoke of when McGregor was there?

A. What day was it?

Q. Oh, within three or four days of September 1st.

A. I cannot remember.

Q. You've run a store quite a while, haven't you?

A. Between three and four years.

(Testimony of Lee Sau Chong.)

Q. And the usual thing with Chinese is not to make their entries the day following in which the actual transactions took place?

A. No; we keep our books every day.

Q. On the actual day that the transaction took place?

A. It ought to be done that way, but I'm not the bookkeeper.

Q. You can't buy liquor on Sunday, can you; I mean, in bottles or jugs?

A. Is it bottles?

Q. Bottles; from a liquor store?

A. I hardly buy any liquor; I do not know whether it can be purchased or not.

Q. You say Mookini didn't know anything about these changed vouchers, is that what I understand your testimony to be?

A. Which vouchers that were changed?

Q. Well, these various vouchers; that is, you say, when the [582] orders were given to take and list something other than what it truly was, that Mookini knew nothing of those or had nothing to do with the doing of those, but Cunningham always did that and Mookini never did that?

A. The change was made from Cunningham through the orders of Miles.

Q. You never heard Miles give the orders, did you?

A. When?

(Testimony of Lee Sau Chong.)

Q. Well, you say that Cunningham had them changed through the orders of Miles; did you hear Miles give Cunningham these orders to have them changed?

A. On May 12th, when I made delivery of the goods to the Camp and Captain Miles received the invoice, he asked Cunningham whether he did order any oysters or not; Cunningham in reply said that it was a mistake because it should be the flowers that were to be used on Mothers' Day;——

Mr. MOORE: I think he's correcting the Interpreter; let's have him talk in English; we'll get along faster; then we can have the Interpreter stand by.

INTERPRETER: The word "mistake" should be deleted from the answer.

Mr. MOORE: Speak in English, then we'll get along faster.

A. (In English): When I deliver May 12th I handed that bills to Mr. Miles; he's in the kitchen there with Cunningham; Mr. Miles reads that over on our invoice, and he call Mr. Cunningham; he say, "Johnny, you buy any oysters from Mr. Lee Chong?" He says, "Why no," he says, "do you remember you told me to buy that cut flowers for Mothers' Day, you said to put it as oysters." He say, [583] "Oh yes; if you check it over and everything all right, it's O. K., and release Lee Chong and let him go back to the store." Then——

(Testimony of Lee Sau Chong.)

Q. I think you testified before that Miles then told you to change it, or something like that, later on?

A. Mr. Cunningham always come in to place the order; it's through Mr. Miles' order.

Q. Here (indicating) is the changed voucher, then, isn't it; referring to United States Exhibit "D"; that's the changed one, isn't it?

A. Yes.

Q. Whose signature is that down at the bottom?

A. That's Mr. Mookini.

Q. Mr. Cunningham's signature doesn't appear on there, does it?

A. He had the invoice——

Q. Does Mr. Cunningham's signature appear on there?

A. No.

Q. Does Mr. Miles'?

A. No.

Q. Showing you the United States Exhibit "C", which is also a May 12th voucher; does Mr. Cunningham's signature appear on there—and this has oysters on it, too; whose signature appears on there?

A. Mr. Mookini.

Q. Mr. Miles' doesn't appear on there?

A. No.

Q. You know Mr. Gibson used to be out there at the Civilian Conservation Camp?

A. I see him in the Camp.

(Testimony of Lee Sau Chong.)

Q. You've seen him down at your store too, haven't you?

A. He come down our store a couple of times.

[584]

Q. And you set up the drinks for him and Mookini, didn't you?

A. I never set up any drinks wtih them.

Q. You never did, you're positive about that?

A. Never set any drinks with them; they drink their own booze.

Q. You're sure that you didn't do it, though, you didn't furnish the liquor?

A. I sure I didn't furnish the liquor.

Q. And you're just as sure of that as of any other testimony you've given here?

A. I couldn't understand you, Mr. Moore.

Q. You're just as sure of that statement as anything else you've said in this courtroom?

A. I'll have that interpreted.

Mr. MOORE: All right.

(Question repeated through Chinese Interpreter.)

A. If I did say that they were there, yes, they were there.

Q. What I am asking you is this: Are you just as sure of that statement that you made—that you never furnished liquor to any of these men in your store—is that statement as true as any other statement you've made in this case?

Mr. ULRICH: I suggest he doesn't know anything could be more true than true.

A. Yes.

(Testimony of Lee Sau Chong.)

Q. (In English): Wasn't there an occasion down there when this man Colman, who was the Camp adjutant—do you know Mr. Colman?

A. I know Mr. Colman.

Q. Didn't he stop at your store, too?

A. He come down couple of times.

Q. And you set up the drinks for him and Mookini? [585]

A. I never set any drinks with him and Mr. Mookini; they bring their drinks to our office.

Mr. MOORE: That's all.

Redirect Examination.

By BARRY S. ULRICH, Esq.

Q. In other words, Mr. Lee Chong, when there was any drinking done down there by any of these men, they brought their own liquor, and the most you did was to give them ginger ale and ice water, is that right?

A. Yes sir.

Mr. ULRICH: That's all.

(Recess—9:42 to 9:50 a. m.)

MONTY ROQUE

was duly called and sworn as a witness for the Defendants, and testified as follows:

Direct Examination

By BARRY S. ULRICH, Esq.

Q. Will you state your name, please?

(Testimony of Monty Roque.)

Q. What is your business or occupation, Mr. Roque?

A. Clerk in the store.

Q. In what store?

A. Lee Chong Co.

Q. How long have you been clerk in Lee Chong Co.?

A. Ever since it was opened in 1932 in July.

Q. And what have been your duties as clerk, what do you do?

A. Well, at times I go to the ships and solicit business.

Q. Well, you have been variously referred to, in testimony which has heretofore been given, as "assistant manager" and, I believe, on one occasion as "bookkeeper". [586]

Q. (continued): Did you have anything to do with keeping books?

A. As to being assistant manager, I never was assistant manager, but keeping books.

Q. I think it's been said that you signed some papers as "assistant manager" some time when Mr. Lee Chong was not here: do you recall doing that?

A. I don't remember. I was given to be in charge of the store when Mr. Lee Chong made a trip to Hilo sometime last year.

Q. Mr. Deville, the United States detective here, I think said that you had signed some papers that he had seen, as "assistant manager"; he came to see you when Mr. Lee Chong was in Hilo one time?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Do you remember signing any papers for him and calling yourself "assistant manager"?

A. Never.

Q. You don't recall?

A. I don't recall that.

Q. Go ahead; just what were your duties; did you have anything to do with the books?

A. Well, the only books I ever take care of in the store is the books for the C. C. C. Camp and of the ships.

Q. Books for the ships and the Camp?

A. Record of sales.

Q. For the C. C. C. Camp?

A. Yes sir.

Q. Do you know a Mr. Cunningham who was connected with the C. C. C. Camp? [587]

A. I do, sir.

Q. Do you know Captain Miles, at one time the Director of the C. C. C. Camp?

A. Yes sir.

Q. Do you know Mr. Mookini, one of the defendants here?

A. Yes sir.

Q. And you're employed by the Company of which Mr. Lee Chong is the manager, is that right?

A. Yes sir.

Q. Now, there was an occasion on which certain goods were ordered from Lee Chong Company for a Mothers' Day dinner at the Camp; do you recall

(Testimony of Monty Roque.)

anything having to do with the taking of that order at your store there, that is, for the Mothers' Day order?

A. Yes sir.

Q. Were you there when anyone placed that order for the Camp?

A. Yes, I was there.

Q. Who did give the order or place it with Lee Chong Company?

A. As far as I can remember, it was Mr. Cunningham had a list in his hand, giving to Mr. Lee Chong a list of the goods that they needed for this occasion.

Q. In other words, when the order was placed there was present yourself, Mr. Lee Chong, and Mr. Cunningham?

A. And Mr. Cunningham, yes sir.

Q. Is that right?

A. Exactly, sir.

Q. Anyone else present?

A. No.

Q. No one else?

A. No.

Q. What happened then?

A. Well, after Mr. Cunningham had given the items that he wanted, to Mr. Lee Chong, Mr. Lee Chong handed it to me—the list. [588]

Q. Anything said about oysters, or the item of oysters on the list there?

(Testimony of Monty Roque.)

A. Well, the oysters was discussed at the same time to be charged in place of the flowers.

Q. Well, who if anyone said anything about charging the cut flowers as oysters?

A. Mr. Cunningham, sir.

Q. What did he say, as nearly as you can recall?

A. Well, he said this way, that, send them some flowers—I couldn't remember how many dozen he mentioned, but he said it could not be charged as flowers, and so Mr. Lee Chong told him, "Well, why not?" He said, "Well, charge it as oysters, because oysters is eatable"; and that's what Mr. Miles wanted to be done.

Q. And that's all that was said about the flowers?

A. That's all about the flowers, so far as I can remember.

Q. Did you later make out the bill for the goods that were sent out on that Mothers' Day order?

A. Yes sir. Mr. Lee Chong went in the Camp with the driver to deliver the goods; when he came back——

Q. But, just before he went out, before the goods were taken out to the Camp, did you prepare the invoice that was to go out with the goods?

A. Yes sir, I did.

Mr. MOORE: Just a minute, Mr. Ulrich; I don't like to interrupt or to curtail in any respect, but I do object to this series, one after another, of leading questions; there's been about four or five in a row, and I certainly object to them. [589]

(Testimony of Monty Roque.)

Mr. ULRICH: I don't think that this is an objectionable question and leading, "Did you prepare the bill?" Of course, we might say, "Who prepared the bill?"

A. I prepared the bill.

Mr. ULRICH: I'll submit, Your Honor, the question "Who prepared the bill", that would not be objectionable technically.

The COURT: The question may be answered. The witness has already stated that he prepared it.

Mr. ULRICH: That he prepared it, yes.

Q. Was that one of your duties, to prepare these bills regularly?

A. Yes sir, regularly.

Q. Not only for the Camp, but for the ships?

A. For the ships' bills also.

Q. I show you the United States Exhibits "B" and "C", which it has been testified were the bills that went out with that load. I ask you to state whether or not you prepared—that is, typed out and prepared those two bills?

A. Yes sir, this is the bill that went with the goods in the Camp.

Q. That's the bill that went with the goods?

A. Yes sir.

Q. And how many copies went out?

A. The original and one copy?

A. Yes sir.

Q. Who took them out, did you say?

A. Mr. Lee Chong went with the driver at that time.

(Testimony of Monty Roque.)

Q. Calling your attention to the fact that the item "oysters" appears on that list there; I'll ask you under what [590] circumstances you put that "oysters" down there instead of something else?

A. Well, that's the thing that I already said, that it was understood that this should be charged as oysters instead of flowers before the goods went in.

Q. Did you check over these goods as they were put on to the truck to be sent out to the Camp?

A. The driver did, sir.

Q. The driver did?

A. Yes sir.

Q. You did not?

A. I did not.

Q. After having given these bills to Mr. Lee Chong to take out with the order of goods, when did you next see either one of these bills, that is, the original or the carbon copy?

A. Well, when Mr. Lee Chong come back from the Camp he hand me this bill here (indicating).

Q. Which one?

A. This original bill here.

Q. Referring to Government's Exhibit "B"?

A. Yes sir.

Q. When he brought that bill back from the Camp did it have on those initials "J. E. C."?

A. Yes sir.

Q. Can you testify to those as the initials of anyone?

(Testimony of Monty Roque.)

A. Well, that's Mr. Cunningham's initials.

Q. Those were on this bill when that came back to you?

A. Yes sir.

Q. When that came back there were these lines on there?

A. No, those lines weren't on there, but those X's were on there.

Q. Those little x's were on there?

A. Yes sir.

Q. When did you discuss or talk to anyone about this bill, [591] being Exhibit "B", after you got it?

A. Well, when Mr. Lee Chong brought this list back he told me that there is——

Mr. MOORE: I object to Mr. Lee Chong's statement as a self-serving declaration, Your Honor.

Mr. ULRICH: Well, all right. I think it would be more understandable if we had it; but don't tell what Mr. Lee Chong told you when he came back.

Q. Did you have any talk with anyone other than Mr. Lee Chong about this bill at a later time?

A. Naturally; when Mr. Cunningham come down it was prearranged——

Q. When did Mr. Cunningham come down?

A. (continuing): to change all these items which he checked to be changed into vegetables.

Q. When Mr. Cunningham—he came back, I understand, after you had gotten this bill?

A. Yes sir.

(Testimony of Monty Roque.)

Q. How long afterwards?

A. I believe, next day; I couldn't say whether on the same day.

Q. Well, a day or so later?

A. Yes sir.

Q. Who was there when Mr. Cunningham came back and asked you to change some of those items to vegetables?

A. There was nobody else there.

Q. Just you and Mr. Cunningham.

A. Just me and Mr. Cunningham.

Q. What changes—I show you this Exhibit "B", and ask you to state what changes he had you make?

A. Well, he told me prepare all these changes into vegetables.

Q. I call your attention to these little crosses opposite [592] the places where lines have been drawn through the items, and ask you if he said anything about those crosses there at that time?

A. Those crosses?

Q. Yes.

A. Those crosses, that's what he mean all those things to be changed into vegetables.

Q. And who had put those vegetables on there?

A. Just these crosses, he did.

Q. Who did?

A. He did.

Mr. MOORE: Who did?

A. Mr. Cunningham——

Mr. MOORE: I object to that, may it please the Court, and ask that the answer be stricken

(Testimony of Monty Roque.)

There's no testimony here that he saw him put on there, or anything of the kind.

The COURT: That's a matter you can properly inquire into, Mr. Moore; for the present the answer may stand.

Mr. ULRICH: Will you just state what was said at the time by Mr. Cunningham about the crosses or anything else or what you were to do.

A. He told me that all these items which have been checked or had crosses is to be changed into vegetables.

Q. The items that had been checked with crosses were to be changed into vegetables?

A. Yes sir.

Q. Then who put those crosses on there?

A. I did, sir.

Q. You did it yourself, is that right?

A. Yes sir.

Q. What did you do it with?

A. I done it so that I would not have made a mistake, because, you know, taking these items here across to the [593] total, because I want to take out the full totals of all those items that he told me to check off.

Q. Did you have a ruler that you ruled it with?

A. Yes, to make sure that I get the right amount there.

Q. Now I show you the United States Exhibits "D" and "E"——

Mr. MOORE: "E" is a copy of "D", is it not?

Mr. ULRICH: "E" is a carbon copy, so far as typewriting is concerned. Do you see those; what

(Testimony of Monty Roque.)

are those; did you prepare those documents?

A. I did, sir.

Q. What are they, and when did you prepare them?

A. This is the bill that I made out there that I was ordered to change those items into vegetables.

Q. And that is where you put these various things that you had run lines through into vegetables?

A. Yes sir.

Q. When did you prepare those statements?

A. The day that Mr. Cunningham came down.

Q. The day that Mr. Cunningham came down?

A. Yes sir.

Q. You had ruled these lines through there, and then you went ahead and put other things in place of the totals?

A. Yes sir.

Q. Now I call your attention to the fact—first, I ask you, when Mr. Cunningham came in there and asked you to make these changes of the articles that he had marked with crosses, was Mr. Mookini there?

A. No sir.

Q. Had Mr. Mookini been present at any talk that had been had about making those changes?

A. No sir. [594]

Q. I show you this changed Exhibit "D", and also "E", which appear to bear, the one the signature, and the other the initials of Mr. Mookini,

(Testimony of Monty Roque.)

and I'll ask you happen to know anything about how those signatures of Mr. Mookini came to be on those bills?

A. Oh, right after I finished making this bill came along in the office and when I handed to him I told him, "Here is a corrected bill for the Mothers' Day", and I asked him to O. K. it.

Q. And did he take it and write his name on it?

A. Yes, he looked up the figures and just signed it and gave it to me.

Q. Was Mr. Cunningham there at that time?

A. Yes, he appeared there; I think at the time Mr. Mookini was signing this bill Mr. Mookini came along.

Q. Mr. Cunningham, as I understand, then had gone out after delineating the making of these changes, and you had made the changes, and Mookini came in after they had been completed?

A. Yes sir.

Q. Before Cunningham had come back?

A. Yes sir.

Q. Now Mr. Roque, do you remember another order that was placed with Lee Chong Company for a luau bill in September or along about the first of September?

A. I do.

Q. Were you there in the store when anyone placed the order for that luau dinner?

A. Yes sir.

(Testimony of Monty Roque.)

Q. You were?

A. I was.

Q. And who placed the order with your store for the luau dinner? [595]

A. Mr. Cunningham, as usual.

Q. Was Mr. Lee Chong there when that order was placed?

A. Yes sir.

Q. Well, what happened on that occasion?

A. On that occasion Mr. Cunningham came in with Mr. Lee Chong, and I was in the office, and he told him that he wanted to place this order for September 1st,—that was a day or two before, I think—and Mr. Lee Chong took the order while he was reading his list for this order, and told him that it would be the same as the May 12th, to change those non-eatables stuff to vegetables.

Q. Who told whom that?

A. Mr. Cunningham.

Q. Told whom that?

A. Told Mr. Lee Chong.

Q. And you were there?

A. I was there, present.

Q. Do you recall whether or not there was on that list, for example, keawe wood and chicken wire; do you remember those items as being on the list that he gave him?

A. Yes sir.

Q. And certain other things that were not eatables?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Did you then prepare a bill?

A. Yes sir.

Q. Did you get these various articles together for shipment to the Camp?

A. Beg pardon?

Q. Did you collect—get together—the various articles for the order that was to be sent out to the Camp, or was that somebody else's duties? [596]

A. Well, the way they do that, when they get the list then they make another list for all the rest of the store, the working men to gather out what they need; all I make is the bills.

Q. Did you prepare the bill which was presented on the delivery of that luau—let's call it the Labor Day order; did you?

A. You mean, on the September 1st?

Q. The September 1st order, yes.

A. Yes sir.

Q. You prepared that bill?

A. Yes sir.

Q. I show you the United States Government's Exhibit "G"; I ask you if that is the bill that you first prepared for that September 1st order?

A. Yes sir.

Q. Calling your attention to the signature or initials at the bottom of the bill "Received the above articles", whose initials are those?

A. The initials, I know that's Mr. Cunningham's initials.

(Testimony of Monty Roque.)

Q. Where was this order delivered, this September 1st order?

A. C. C. C. Camp.

Q. Was it taken out there by you, or was it delivered at your place of business?

A. This order is the only order that went to the Camp on the Camp's truck.

Q. That is, where did the C. C. C. Camp people take delivery from you of the order?

A. From our place.

Q. That's your place of business?

A. Yes sir.

Q. They took it in their truck, is that right?

A. Yes sir. [597]

Q. Were you there when these goods were loaded on to their truck?

A. Yes sir.

Q. Who was there on the truck taking delivery of the goods for the Camp?

A. There were two working men from the Camp.

Q. Two working men from the Camp?

A. Yes sir; the driver and the helper.

*Q. Where did Mr. Cunningham give you this O. K. or receipt; sign it at that time, or some other time?

A. Mr. Lee Chong——

Mr. MOORE: May it please the Court, that's the same thing I objected to here. He asks who was there, and then he don't get the answer he wants, then he asks was so and so there. Let's let this witness testify.

(Testimony of Monty Roque.)

Mr. ULRICH: On the other hand, I'm not at all concerned with whether Mr. Cunningham was there or not; I don't know, and I am asking him. I thought he was there, because he signed the receipt; if he wasn't there, I am just asking him if it was signed at some other time. I don't think it's improper on direct.

Mr. MOORE: The question is very leading.

Mr. ULRICH: The question is, "Did he sign it at that time or some other time?" I merely want to know what the fact is.

The COURT: Just what was the form of the question, Mr. Reporter?

(Reporter reads question, marked *, on this page.)

A. Mr. Cunningham never give me this.

Mr. MOORE: Wait a minute—— [598]

Mr. ULRICH: I'll withdraw the question. I ask you this question: Do you know Mr. Cunningham placed his signature on that receipt?

A. I don't know.

Q. You don't know?

A. No.

Q. Now I'll ask you the question directly: Do you know whether he was there when the goods were loaded on the truck—Mr. Cunningham?

A. I don't know.

Mr. MOORE: May it please the Court, he can ask this witness who was there, and he can reply. This idea of saying "Was so and so there", or "Was this person there"—let him tell who was there.

(Testimony of Monty Roque.)

Mr. ULRICH: Well, I think it's reasonable to ask him whether Cunningham was there or not; if he wasn't there, the witness will say so. We have been directing questions as to various people—"Was Mr. Mookini there?"—counsel has been examining the same way. All right; I withdraw the question. Start out and give us, as nearly as you can remember, the people.

The COURT: He has already stated there were two of the workmen from the Camp there.

Mr. ULRICH: Now I'll ask you, was anybody else there from the Camp, as nearly as you can remember?

A. That morning, I couldn't recall who else over there besides those two drivers.

Q. You don't recall anyone else being there?

A. Yes.

Q. That's perfectly all right. Do you remember at that time what if anything was done with this statement [599] that you had prepared; did you keep it there, or did you give it to anybody on the load, or not?

A. No; I gave it to Mr. Lee Chong, and Mr. Lee Chong made a trip to the Camp to have it OK'd.

Q. You gave it to Mr. Lee Chong, and he took it out to the Camp?

A. Yes sir.

Q. Do you recall a later time when this bill, in which you had listed certain non-edibles as vegetables and edibles, was changed back; that is, separated

(Testimony of Monty Roque.)

again into the edibles and non-edibles as originally ordered and delivered; do you recall that having happened?

A. Yes sir, I recall.

Q. Will you tell what happened on that occasion, who was present, and so forth?

A. That was away back later, on October, around October 2nd or 3rd; Mr. Miles came down to see Mr. Lee Chong about having these segregated bills —what I mean, to make a separate bill of this actual delivery in the Camp—in my presence in the office.

Q. He asked Mr. Lee Chong to separate the——

A. All that actually delivered; like, for instance, the keawe wood and the chicken wire, and all those non-edibles stuff.

Q. He wanted to have that put on a separate bill, is that right?

A. Yes sir.

Q. And had you do that?

A. I did.

Q. That is, you put it—the keawe wood and various things that had been listed as vegetables, on a separate bill?

A. Yes sir. [600]

Q. Now I have here two documents, both of them bills listing keawe wood and chicken wire and so forth, totaling $72.50, one of those bills being addresesd to "C. C. C. Camp Canteen", and the other being addressed merely to "C. C. C. Camp". Did you prepare both of those documents, by the way?

A. Yes sir, I did.

(Testimony of Monty Roque.)

Q. Referring to Government's Exhibit "J" and Defendants' Exhibit 1. You have just testified that when Mr. Miles came in and asked that these be segregated, you prepared a separate bill?

A. Yes sir.

Q. Which one of those was the first bill that you prepared for him at that time?

A. This one (indicating).

Q. "This one" referring to Defendants' Exhibit 1, which was merely addressed "C. C. C. Camp"?

A. Yes sir.

Q. Without any "Canteen" on it, is that right?

A. Yes sir.

Q. What did you do with this separate bill; do you know what was done with it, the first separate bill?

A. I give it to Mr. Lee Chong to take it up to the Camp.

Q. You gave it to Mr. Lee Chong to take out to the Camp?

A. Yes sir.

Q. Now, was there a later time when you had another conversation with Mr. Miles about this separate bill?

A. Yes sir; that's the time when Mr. Lee Chong went to the Camp; while on his way down Mr. Miles came in to the office.

Q. I understand Mr. Miles came to the office, and who was present? [601]

A. In my presence and Mr. McGregor.

(Testimony of Monty Roque.)

Q. You were there, and Mr. McGregor was there?

A. Yes.

Q. And Mr. Lee Chong was on his way to the Camp or out at the Camp?

A. Yes sir.

Q. What happened on that occasion?

A. He asked for Mr. Lee Chong, and I told him that Mr. Lee Chong had went to the Camp to take the statement for the month of September and this bill for the keawe wood and chicken wire, all those things that he asked to be sepa[illegible]

Q. Anything else happen?

A. And he asked me—well then he said, "Why didn't he wait?" Well, I say I don't know, but I say he went and take this statement. And he says, "Well, connect me to the Camp", so I get the C. C. C. Camp on the telephone and handed it to him, and he talked through the telephone.

Q. What did he say, if you remember?

A. As far as I can remember, he asked for Mr. Colman, and by the conversation there he asked if Mr. Lee Chong is still in the Camp, and of course I don't know what was the answer at the other end. And I heard him say, "Well, keep that statement and come down in town and give me that statement"; he say, "Come in town and meet me in town and give me that statement, and don't let nobody see it."

Q. Talking to somebody out there?

A. To somebody in the Camp.

(Testimony of Monty Roque.)

Q. Did Mr. Miles at that time say anything about charging anything to the Canteen?

A. Yes; he asked me how I made the bill that Mr. Lee Chong—the change I made that Mr. Lee Chong took to the Camp; [602] I told him that I merely separated the $72.50 which is charged to keawe wood and all that, to the Camp, and he said, "No, I don't want it that way, I want it charged to the Canteen, I told you folks." I say, "Well, I don't know, the only time I knew about this Canteen is now that you mention this;" I says, "Well, I can do that;" so I made out again other changes, I put "Canteen" on it, charging the Canteen.

Q. Now I show you United States Exhibit "J", the same bill, with the "Canteen"; I ask you if you prepared that as a result of that conversation?

A. I did.

Q. As I understand it, at that time there were present yourself, McGregor, and Miles?

A. And Mr. Miles, yes sir.

Q. And that's the first time you had heard anything about the Canteen?

A. Yes, the first time.

Q. Did you see Mr. Miles later in that day or a later time?

A. Yes. After he told me to make out that bill to be charged to the Canteen, he told me—I think he went out and told me that he would come back; I am pretty sure, I think he came back later in the afternoon and took a copy of it.

(Testimony of Monty Roque.)

Q. At the time that you took these two orders, that is, the Mothers' Day order and the Labor day order, was Mr. Mookini present at either time?

A. Several times he come down to the store with Mr.——

Q. No, no; at the time you took the Mothers' Day order and at the time you took the Labor Day order, was he present on either of those occasions?

[603]

A. No.

Q. But he did come to the store from time to time, did you say?

A. Oh yes, sir.

Q. Was there a time, Mr. Roque, when there was a discussion had in your store about the payment of Mr. Lee Chong by Mr. Miles, if you were there and recall such a conversation?

A. Yes, I recall one morning he came down with a check.

Q. Do you remember about when that was?

A. That was around October 11th or 12th, I couldn't just exactly remember what date, but I know he came down with a check.

Q. Who came down with a check?

A. Mr. Miles.

Q. All right; what happened on that occasion, if you recall?

A. When he came down that morning Mr. McGregor happened to be there again, and myself, and also Mr. Lee Chong, and he presented the check to Mr. Lee Chong and said, "Here is your money for

(Testimony of Monty Roque.)

your September account." And Mr. Lee Chong looked at the check, and we figured it out, and that was short of some change.

Q. Short of what?

A. Short of some change; it wasn't the whole figure that they owe us for the September account; and so he asked Mr. Miles what was the shortage, and he says, "Well, I deducted the $37.65 from the Mothers' Day bill, and we'll pay you that amount from the Canteen." And so Mr. McGregor happened to come in—not to come in, I mean to enter into the conversation, and asked what was the deduction for. "Well," Mr. Miles says, "there was an error on the May 12th [604] payment, and I want it to have been done this way so I could pay it from the Canteen"; so Mr. McGregor told him, he says, "Well, if there was an error on that payment on that May 12th you can just issue a check from the Canteen to the Mess Fund"; that was the argument between them, in front of me, in the office.

Q. As a result of the conversation there, did Mr. Lee Chong accept that check, or not?

A. No, he refused to accept the check.

Q. Do you know of anything else that happened there, or have you told us everything?

A. Well, it was between Mr. McGregor and Mr. Miles, the argument, you see; and Mr. McGregor asked him, "Are you going to pay all the rest of the balance of this from the Canteen?" He says,

(Testimony of Monty Roque.)

"Yes." He says, "Well, we won't accept the check here." He told Mr. Lee Chong don't accept the check and we would go down there to the Camp and ask for the full amount from the Canteen and also from the Mess Fund what they owe us; so they did went.

Q. You kept, you say, the account for the Camp and the accounts for the steamship companies?

A. Yes sir.

Q. And each statement that went out to the Camp there, such as these statements, was made up by you, is that right?

A. Yes sir.

Q. There has been testimony in this case offered by the prosecution to the effect that not only were these bills changed for the Mothers' Day and Labor Day bills, but that there was a regular practice, beginning in April, every month, of changing bills to camouflage personal groceries [605] that were sent to Mr. Mookini. Now, did anything of that kind ever happen?

A. No sir, not that I know of.

Q. Did you have anything to do with Mr. Mookini's personal account with the Lee Chong Company?

A. There is a time on the month of September that he asked us to give him a credit of groceries.

Q. Was that the only time you had him on the books there at all for groceries?

A. Yes sir.

(Testimony of Monty Roque.)

Q. I show you the Defendants' Exhibit "A" for Identification only, and ask you if you made out that account?

A. Yes sir.

Q. Is that your handwriting?

A. Yes, I made this out.

Q. Is that the account that Mr. Mookini had with the Lee Chong Company?

A. Yes sir.

Q. And is it the only account he ever had with the Lee Chong Company?

A. The only account.

Q. Covering the month from September 9th to October 7th, is that right?

A. Yes sir.

Q. Total amount $48.05?

A. Yes sir.

Mr. ULRICH: I think it may be received as an exhibit now, if Your Honor please.

The COURT: You offer it, do you?

Mr. ULRICH: I do.

The COURT: Any objection? [606]

Mr. MOORE: No, Your Honor.

The COURT: It will be admitted.

(Marked "Defendants' Exhibit 3")

(Later corrected to "4"; see page 405.)

(Testimony of Monty Roque.)

Crim. #8518

DEFENDANTS' EXHIBIT #4
Admitted

Crim. #8518 Defts'. Exhibit "A" marked for ident.
Mr. R. Mookini

Dates		Accts.	Pmt.	Bal.
Sept. 9	Mdse & cigarettes	12.75		12.75
" 12	"	2.60		15.35
" 14	"	1.65		17.00
" 16	"	3.00		20.00
" 16	Chop Suey from Happy Inn	4.40		24.40
" 22	Mdse	3.00		27.40
" 22	Ham, Eggs & Bris. Stew	1.80		29.20
" 25	Mdse.	3.25		32.45
" 30	"	7.85		40.30
Oct. 6	"	6.10		46.40
" 7	Chop Suey taken home	1.65		48.05
	4/3/35 paid on a/c			40.30
			Bal.	7.75

[120]

Mr. ULRICH: (Showing to the jury): This is the account of Mookini with Lee Chong Company from September 9th to the final item October 7th, showing payments, and balance still owing of $7.75. Is that right?

A. That payment—I never receive any of those payments.

Q. Oh, it's not your handwriting?

A. No sir.

Q. Mr. Roque, I'm going to ask you whether or not Lee Chong Company had liquor down there at any time and, if so, what kind of liquor and for what purposes it was used?

(Testimony of Monty Roque.)

A. Well, there are times that we have beer, and also several times had some of these Chinese liquor, whatever you call them.

Q. What do you do with that?

A. Every once in a while the Company buys these Chinese liquor for their working men.

Q. So far as you know, and to the best of your recollection, was there ever any liquor sold by Lee Chong Company to anybody?

A. Never.

Q. Did you ever have or buy around there any gin or whiskey?

A. No sir, not in my knowledge.

Q. When people would come there to drink, or would come in and drink, there's been some testimony about Mr. Lee Chong supplying the ginger ale and ice water; do you remember where the liquor was bought from?

Mr. MOORE: May it please the Court, I object to that. This is a witness on the stand; he is not a defendant, and [607] going in here with "There is some testimony about Mr. Lee Chong furnishing ginger ale", now, may it please the Court, that is not proper and he should not inform this witness what the testimony is and then let him testify in accordance with it or contra to that; let him give his own testimony without this prompting.

Mr. ULRICH: I think counsel is right on that last question, if Your Honor please; I'll withdraw any reference to prior testimony; I just want to get along as quickly as possible.

(Testimony of Monty Roque.)

Q. State if you will, Mr. Roque, what happened about drinking down there, of any people other than the employees or the men that you have been talking about, if you recall anything of that kind having happened; if you don't, just say so.

A. I do recall; several times boys from the Camp came down in the store with their bottle of—I don't know what it is, whether gin or whiskey—and asked us to lend them some glasses with a little piece of ice, so we gave them the glasses and we cracked some ice for them and put it in the bowl and give it to them in the office.

Q. You recall that happening, do you?

A. Yes sir.

Q. When you say "boys from the Camp", to whom do you refer?

A. I don't know which is; there's about four of them one time, in on instance; Mr. Cunningham and Mr. Mookini once or twice, with the boys, having a little friendly drink.

Mr. ULRICH: May I mention these names, Mr. Moore, that you mentioned this morning—Mr. Colman and Mr. Gibson?

Mr. MOORE: Well, ask him about "anybody else". [608]

Mr. ULRICH: Well, all right. Do you remember anybody else?

A. Well, that's only the two persons that I know.

Q. The only ones you knew?

A. Yes, the ones that I knew is Mr. Mookini and Mr. Cunningham.

(Testimony of Monty Roque.)

Q. There were some other men whom you didn't know?

A. I don't know them, but they came there.

Mr. ULRICH: That's all.

(Recess—10:38 to 10:48 a. m.)

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. By whom are you employed?

A. By Mr. Lee Chong.

Q. And you were employed by him away back when he first started his store in 1933, was it?

A. 1932, sir.

Q. And what time in 1932 did he start that store?

A. Same time that store was opened, that's July 22nd, I think, or July 20th.

Q. And you say that you were a clerk there and solicited for business, and also a bookkeeper?

A. Not exactly a bookkeeper.

Q. Well, do you help put up these orders in the store?

A. Beg pardon?

Q. Do you help put up the orders in the store that go out to your customers?

A. From time to time, yes.

Q. Well, is that principally your business, or——

A. No; my really work there is to solicit business from ships and to make invoices for him in the office. [609]

(Testimony of Monty Roque.)

Q. Then, your principal thing is, you go out and visit the stewards and so forth on board these boats to get orders for ships stores?

A. Yes sir.

Q. And you keep those accounts and the C. C. C. account; in other words, you keep the books for those two particular things?

A. Yes sir.

Q. And with reference to the ships' accounts, you have kept those since you've started to work there and are still keeping them?

A. Yes sir.

Q. And you say that while Mr. Lee Chong was over on Hawaii that you did act in the capacity of looking after the running of the store?

A. Yes sir.

Q. Now, calling your attention to United States Exhibit "B", you say that these lines that are drawn through there were drawn through by you?

A. Yes sir.

Q. And that later on, at the request of Mr. Cunningham, these were changed to what is United States Exhibit "D", is that right?

A. Yes sir.

Q. Keep that so you can refer to it, in your hand, because I am going to ask you some questions. Now, will you call off the items on that exhibit that are not proper or that are not the ones that were actually delivered; start from the top and go right down.

A. Oysters is the first. [610]

(Testimony of Monty Roque.)

Q. All right; what is the next item that wasn't delivered?

Mr. ULRICH: What list are you showing him?

Mr. MOORE: United States Exhibit "D".

The COURT: The invoice that has the lines drawn through it?

Mr. MOORE: No, no, Your Honor; it's the one that's changed from that.

Mr. ULRICH: I don't think he can pick them out that way; if he has the other list, he can check one against the other.

A. Yes sir, if Your Honor please.

Mr. ULRICH: No; ask him if he can pick them out.

Mr. MOORE: I've got the man under cross-examination, and we're entitled to have that.

A. Fresh spinach, white squash, fresh lima beans.

Q. How about 4 cases of apples?

Mr. ULRICH: Is this a memory test, or something?

A. I just couldn't exactly tell you——

Mr. MOORE: Do you remember when Mr. Lee Chong was over on the Island of Hawaii?

A. Yes sir, I remember.

Q. And you remember that Mr. Deville came down to the store?

A. Yes sir, I do.

Q. And you remember in there that he took a photostatic copy of the bill that you have there, that is, a photostatic copy of Exhibit "D", and

(Testimony of Monty Roque.)

asked you to name off to him what of those items were camouflaged or were not proper; do you recall that?

A. I recall that.

Q. And you called them off, didn't you?

A. Didn't call them off;——

Q. You didn't? [611]

A. (continuing): I told him to show me the original which he took, and then probably I could help him out with the one he wants.

Q. (After conference with Mr. Deville): I am incorrect; that he had that particular paper that you have in your hand, or did have in your hand, United States Exhibit "D"; do you remember that he asked you to call them off, and you called them off?

A. I didn't exactly call them all off, Your Honor.

Q. Well, don't you recall that as you called these items off, you called off 500 oysters, and 4 cases of apples, and 400 pounds of pumpkin, and 400 pounds of squash, and 400 pounds of spinach, and 40 pounds lima beans?

A. I did not call all those off.

Q. You deny that you called all those off?

A. Yes.

Q. Then, if Mr. Deville says that, that isn't true?

A. That isn't true that I called out those articles, but I mentioned a few things.

Q. What you did mention, then, is what I got your statement a little while ago—the 500 oysters,

(Testimony of Monty Roque.)

the spinach, the white squash, and the lima beans; but you didn't call off the pumpkin and the 4 cases of apples?

A. Well, I don't know; I'm not sure.

Q. Do you deny it?

A. I'm not sure.

Q. Do you remember when Lee Chong returned some few days afterwards and then Mr. Deville come down there again?

A. Yes, I recall that.

Q. And you had this same paper that Mr. Deville had, this same identical paper, which is United States Exhibit "D"?

A. I don't remember him bringing this paper; all I remember [612] that he ever come up in the store were when all those pictures were taken on our invoices.

Q. Don't you remember that Mr. Deville asked Lee Chong what were the camouflaged items on this, and he said "Well, I don't know", or words to that effect, "call Roque, he knows"; do you remember that?

A. Yes sir.

Q. And you came in the office, didn't you?

A. Yes sir.

*Q. Don't you remember that after Mr. Lee Chong told you to call these off and to call that in the office for that purpose, that you went right down the line and named these off, that is, the oysters, the 4 cases of apples, the 400 pounds of pumpkin,

(Testimony of Monty Roque.)

the 400 pounds of squash, the 400 pounds of spinach, and the 40 pounds of lima beans?

Mr. ULRICH: Just a moment; I ask that the question be made definite. I question whether he took the paper with nothing marked on it and from memory read it off without any reference to other papers.

Mr. MOORE: That he had a document which had these articles and which are identical to United States Exhibit "D".

Mr. ULRICH: Of course it would be easy enough for him, by proper reference to another document, to call them off; if that's the question, it's improper cross-examination. If you're trying to test this man's memory, whether he held the paper without any identifying marks on it and read it off and if Mr. Deville is going to say that he performed that memory feat for him, I submit it's immaterial and irrelevant.

Mr. MOORE: We submit, Your Honor, that the question is proper.

The COURT: The question may be answered.

[613]

Mr. MOORE: Read the question please, Mr. Reporter.

(Reporter reads question, marked *, page 383.)

Q. (continuing): And that when you called them off, Mr. Deville made a notation?

A. I never did call them off.

Q. You never did call them off?

A. Yes sir.

(Testimony of Monty Roque.)

Q. You deny calling them off in the presence of Mr. Lee Chong?

A. I did not.

Q. Don't you remember that when you called off the pumpkin that Mr. Lee Chong says, "No, that was delivered"?

A. No sir. All I told him, bring the original invoice that I had made it out from and then I could help him out, I couldn't do anything with those pictures, those pictures is blank to me.

Q. You can't understand photostatic copies, is that right? (no answer)

Q. You said you didn't check these goods on the load at all?

A. No sir.

Q. You don't know what went on the load?

A. Well, the driver had checked that; I don't know.

Q. You don't know?

A. No sir.

Q. You don't keep this book in Chinese, do you?

A. No sir.

Q. You can't read or write Chinese, can you?

A. No sir.

Q. And you have nothing to do with the articles that are listed in this book, have you.

A. Not whatsoever.

Q. And you don't know of your own knowledge whether or not there may be articles that are listed in that book that went on one of these loads going to the C. C. C. Camp? [614]

A. I don't know nothing about the book, sir.

(Testimony of Monty Roque.)

Q. Now, these flowers, do you know anything about those, for May 12th?

A. Yes sir.

Q. Where were those bought?

A. Well, they were all bought it themselves; what I mean, the driver and a couple of the men what working with me in our place they went out and bought the flowers.

Q. You mean the truck driver?

A. Yes, the truck driver.

Q. And a couple of the clerks in the place?

A. Yes sir.

Q. Do you know how much those flowers were?

A. After they add all the amount that they paid for the flowers they told me it was $17.50.

Q. They told you that the total amount of the flowers purchased was $17.50?

A. $17.50, yes sir.

Q. And that was all the flowers they purchased?

A. Yes sir.

Q. And that was all the flowers that was delivered to the C. C. C. Camp?

A. That's all the flowers that were delivered.

Q. You don't remember any discussion about flowers costing $23.75, do you?

A. No, I don't remember.

Q. And you don't recall any conversation between yourself, Mr. Lee Chong, and Mr. Deville, to the effect that the flowers cost $23.75, and those items were covered by the oysters in the sum of $17.50 and the strawberries in the sum of $6.25?

[615]

(Testimony of Monty Roque.)

A. No sir.

Q. That never took place?

A. No sir.

Q. Now, with reference to this May 12th order, that's the Mothers' Day affair, you say that you have a distinct recollection that that order was given by Mr. Cunningham?

A. Yes sir.

Q. And Mr. Mookini was not there?

A. Was not there when Mr. Cunningham had read the items that he had on his list, which he gave it to Mr. Lee Chong in my presence.

Q. And Lee Chong turned this list over to you and told you to make it up in accordance with what Mr. Cunningham had said?

A. Yes sir.

Q. And you made out these bills, putting this item of oysters on there, at Mr. Lee Chong's direction—that is, Cunningham directed Lee Chong and Lee Chong directed you?

A. Exactly, sir.

Q. Who gave the order of May 16th?

Mr. ULRICH: There isn't any order of May 16th in evidence, if Your Honor please.

Mr. MOORE: There's an order of May 16th, not in evidence; I'm testing this man's credibility; I submit we're entitled to do it.

Mr. ULRICH: Oh, if Your Honor please, I submit it would be highly improper to take him all through all the orders that have been placed by the

(Testimony of Monty Roque.)

Camp with them day after day and ask who placed the order. I'll submit the objection.

Mr. MOORE: (argument).

Mr. ULRICH: (argument). [616]

Mr. MOORE: (argument).

Mr. ULRICH: I'll submit the objection.

The COURT: If it's counsel's intention to attempt to examine all of these daily transactions throughout this period, the Court feels that would be quite irrelevant. If some specific test is made for a particular reason, it will be admitted.

Mr. MOORE: May it please the Court, it isn't our intention to go through each and every one of these, at all; it is our intention to pick some two or three at the most, at random, and see what he can give us on those.

The COURT: With very restricted limitations, you may proceed.

Mr. MOORE: Who gave the order of May 16th?

Mr. ULRICH: Now then, if Your Honor please, in order to put it on a parallel and make it a real memory test, if that's what's supposed to be the operation, it is submitted he should be shown the May 16th bill, something to tie it into this evidence, just like he's been shown these other bills.

Mr. MOORE: Here's one dated May 16th; do you remember that?

A. Yes, I remember that.

Q. Who gave that?

A. Who gave that order I don't know, I'm not so sure.

(Testimony of Monty Roque.)

Q. Do you know who was present when the order was given?

A. I couldn't remember that.

Q. You can't remember?

A. I remember making that bill, sir.

Q. You don't remember just how this order was delivered and taken out to the Camp?

A. No. [617]

Q. You don't know what time of day it was given?

A. No sir.

Q. The only thing you know about it is that you made out this list yourself?

A. Yes, I know that.

Q. And you know this initial here is Mr. Cunningham's?

A. Mr. Cunningham's, yes sir.

Q. Here's one of May 29th; who gave that order?

A. I couldn't specify who really give the order, but as far as my recollection serves me, all the orders that has been placed in the store was put by Mr. Cunningham.

Q. Well, can you tell anything from the voucher whether it was placed at the store, or over the telephone, or what?

A. I couldn't tell you whether this is—of course, there's orders that was given through the telephone, and there were times that he come down to the store, and give orders, and also there were times

(Testimony of Monty Roque.)

when they do deliver the goods and they would make a memorandum or a list of what they want for the next day.

Q. Mr. Mookini did give orders down there at the store, didn't he?

A. He did give orders there in the latter part of, as far as I can remember, it's around October.

Q. That's the first time he ever gave any orders?

A. Yes sir, after Mr. Cunningham was discharged from the Camp, what I understood, then he placed the orders.

Q. Didn't he come down with Cunningham the very first order you got, around April 5th or 6th?

A. I don't remember.

Q. You don't know how this list of goods, the last one I [618] showed you, was delivered, do you?

A. No, I don't remember.

Q. You don't know whether Mr. Lee Chong went out on the truck or not, do you?

A. No sir, I don't remember.

Q. You say you asked Mr. Mookini to O. K. this bill; that's referring to United States Exhibit "D"?

A. Oh yes, this one.

Q. Where was it signed?

A. Right in the office.

Q. Was anybody there besides yourself and Mr. Mookini?

A. No, it's just me and Mr. Mookini; I was just getting through making this bill when Mr. Mookini came in.

(Testimony of Monty Roque.)

Q. Did he compare it with the old bill that you had?

A. Well, I handed this bill to him and said, "Here is the corrected bill."

Q. You just handed this to him?

A. Yes sir.

Q. And that's all he had in front of him?

A. Yes, this and the duplicate.

Q. And then he signed it?

A. He signed it.

Q. And gave it back to you?

A. Yes sir.

Q. And then you went about your business and he went about his?

A. Yes sir.

Q. And that's all that happened then?

A. That's all.

Q. And Mr. Lee Chong or Mr. Cunningham weren't around at that time?

A. Mr. Cunningham came around, as far as I can remember, because he took the duplicate of that bill. [619]

Q. Mr. Cunningham took the duplicate of this bill?

A. Yes sir; while Mr. Mookini was signing this bill Mr. Cunningham came along.

Q. Well, was there ever a time in that store that Mr. Mookini did anything when Cunningham wasn't there?

A. Will you repeat the question?

(Testimony of Monty Roque.)

Mr. ULRICH: What do you mean? Merely being there would be something I suppose. "If he did anything when Mr. Cunningham wasn't there" —I ask that the question be made definite.

Mr. MOORE: Did Mr. Mookini ever go to the store when Mr. Cunningham wasn't there?

A. Oh yes, several times.

Q. Did Mr. Mookini ever give any orders for the C. C. C. Camp when Mr. Cunningham wasn't there?

A. No, never did.

Q. Never gave any order——

A. Not as far as I can remember.

Q. And you had orders at least once a week, didn't you, for the C. C. C. Camp?

A. Sometimes twice a week, sometimes three times a week.

Q. But, I say, at least once a week you had orders?

A. Oh yes, at least.

Q. About how often would these orders be given personally at the store—just to give us the best of your idea?

A. Well, there were times that they ordered every two days; sometimes—it all depend how much they order on that day——

Q. I don't think you understood my question. My question is this, Mr. Roque: About how often, or on an average [620] how many times, we'll say, a month would these orders for this Camp be given personally and not by telephone?

(Testimony of Monty Roque.)

A. Oh; that I can't tell you, how many times they have given the order by personally and how many times by telephone.

Q. You can't give us any idea of that, at all?

A. No, I don't think so; I am sorry.

Q. Would you say that they came in as many as five times a month?

A. More than that.

Q. Well, as many as ten times a month?

A. Probably.

Q. That's your best recollection; you judge about ten times a month that the orders were personally given?

A. Yes sir.

Q. And all these orders, except in the latter part of September, were given by Cunningham, is that your testimony?

A. Beg pardon?

Q. You say all these orders, except the ones in the latter part of September, were given by Cunningham personally, that is, when they personally given at the store?

A. Latter part of September I don't know.

Q. When was it, you say, that Mookini in the latter part of the thing gave some orders?

A. That's in October.

Q. Right up to the first of October, during all the time that Lee Chong was trading at the Camp, all the personal orders were given by Cunningham?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Now, with reference to this luau, your distinct recollection of that is that Cunningham gave that order? [621]

A. Yes sir.

Q. And Mookini was not there?

A. I don't think so.

Q. Well now, are you sure of that?

A. I am pretty sure of that.

Q. What?

A. I'm pretty sure of that.

Q. Well, are you as sure of that as of this other testimony that you've given?

A. Beg pardon?

Q. Are you as sure of that statement as you are of this other testimony that you've given?

A. Yes sir.

Q. Now, referring to United States Exhibit "G"; this is the original of the bill that you made out for that September luau affair, is it not?

A. Yes sir.

Q. And this is the one that has—as we say, it's there but you can't see it—the keawe wood and the wire and all that stuff?

A. That's right.

Q. Then this Exhibit "H" is the one, taken with the other exhibit for $72.50 that Mr. Ulrich showed you here a while ago, to make up the total of this bill?

A. Yes sir.

(Testimony of Monty Roque.)

Q. And, with reference to this Exhibit "H", that is the corrected bill, together with "J", the small one, and Defendants' Exhibit 1, that with one of these make up this?

A. Yes sir, that's right. [622]

Q. That is, "H" and "J" make up "G"?

A. Yes sir.

Q. Now, particularly calling your attention to "G"—I don't want any mistake on this—are you sure that Cunningham gave that order; you're positive of that?

A. Positively.

Q. And that Mookini didn't have a thing to do with it?

A. He wasn't around.

Q. Never went in the store at all about it?

A. Are you talking about a particular day——?

Q. I am talking about the September luau.

A. The particular day when he placed the order?

Q. Yes; did he have anything to do with this order at any time?

A. No, never did.

Q. Mookini never had a thing to do with that?

A. Not at all.

Q. In other words, you drew that up; Cunningham gave the list to Mr. Lee Chong, and you were sitting there in the office, is that right?

A. Yes sir.

Q. And, as Mr. Cunningham called these off, Lee Chong wrote them out, and then Cunningham

(Testimony of Monty Roque.)

told Lee Chong to put these items of keawe wood, chicken wire, and the items that are on that smaller bill that was later separated, that's Exhibit "J", to put those in as vegetables, is that right?

A. Exactly.

Q. Because they weren't eatables, they couldn't pay for them and they would have to put them in the other way?

A. Yes sir.

Mr. ULRICH: I don't want you to slip anything over on the witness; you said something about "couldn't pay for [623] them"; he said simply he put them over there because they were vegetables, because Mr. Miles wanted it that way; that's his testimony.

Mr. MOORE: He said that they would have to charge those as eatables?

A. Those would have to be charged as eatables.

Q. In other words, the effect was that's the only way they could get them paid for?

Mr. ULRICH: Just a moment. (argument).

Mr. MOORE: I'll withdraw the question.

Q. That was the first time that you had ever heard anything about this list of goods for the luau, was when Cunningham came in and told Lee Chong what to do, and he in turn told you what to do?

A. Yes sir.

Q. And from that time up until the luau load was taken away from the store, did Mookini ever come in about those luau items?

A. Up to it was delivered?

(Testimony of Monty Roque.)

Q. From the time the order was given until the time it was delivered.

A. I cannot remember whether he had been there.

Q. Did he ever discuss anything about this list of things on the luau bill between the time Cunningham gave the order and the time, as you say, they were loaded on the Civilian Conservation Camp truck at Lee Chong's?

A. Did they ever discuss?

Q. Discuss—talk to you about it?

A. About what?

Q. About these items that went out for the luau. [624]

A. No, he never discussed it.

Q. And nobody directed you to make any changes at all from the time that, you say, Cunningham gave you the order until they were delivered?

A. It was the time when he gave the order to Mr. Lee Chong, he said, "This bill has to be just like the May 12th.; all those non-eatables stuff must be changed into vegetables."

Q. You misunderstand. What I mean is this: You've got your order to change the non-eatables into eatables; Cunningham to Lee Chong, Lee Chong to you?

A. Yes sir.

Q. After that—now we've got there, don't go back before that—then from the time you got that from Lee Chong, were there any changes directed in that bill from then until the time it was delivered?

A. No sir.

(Testimony of Monty Roque.)

Q. In other words, the whole transaction was in that one sitting with yourself, Lee Chong, and Cunningham?

A. Yes sir.

Q. And the only changes made with reference to that luau bill were long after this and in the month of October when Mr. Miles came down and told you—I think, when Mr. Lee Chong wasn't there?

A. Lee Chong and me.

Q. You and Lee Chong were together?

A. Yes sir.

Q. And told you you'd have to take out the items of keawe wood and other things, making $72.50, and bill those separately?

A. Exactly.

Q. And the others billed as they were delivered?

A. Yes sir. [625]

Q. And then later on there was a direction or a request by Mr. Miles on this $72.50 bill, which is Exhibit "J" or which is Defendants' Exhibit 1, to have the word "Canteen" added to that?

A. Added, the second time.

Q. As it appears on United States Exhibit "J"?

A. Yes sir; that's the second time when he came.

Q. Who kept the books for the private customers?

A. We have no private customers' accounts on our place, except that was over there with certain individual friends that they had buy a few things that the boss will favor to have an account.

(Testimony of Monty Roque.)

Q. You kept the books for the C. C. C. Camp, didn't you?

A. Yes, the record of sales to the C. C. C. Camp and ships.

Mr. MOORE: Has this got a mark, Mr. Ulrich?

The COURT: That's the book in which one page is designated as "Defendants' Exhibit 3". It could properly be referred to as the book that has Defendants' Exhibit 3.

Mr. MOORE: On Defendants' Exhibit 3, is this your handwriting up here (indicating)?

A. Oh yes.

Q. This is your handwriting, and this is what you saw when you kept the books for the Civilian Conservation Corps Camp?

A. Yes sir.

Q. And this (indicating) is the ships' affairs?

A. Ships.

Q. This, as I take it, is just the monthly statements—gross amounts?

A. That's just a memorandum of all the sales. [626]

Q. In other words, this represents the gross sales or the total sales, we'll say; this first item, $582.26, for May, is that right?

A. Yes sir.

Q. Everything that was sold?

A. In one month.

Q. Up to May 7th, June 7th, July 7th, September 3rd, October 12th?

(Testimony of Monty Roque.)

A. The memorandum of payments we received from the Camp.

Q. In other words, that's the checks that you got from Mr. Miles?

A. Exactly.

Q. And those were in payment of the vouchers that you presented?

A. Beg pardon; I didn't receive the checks; it's Mr. Lee Chong, and he tell me the amount and I would put on the memorandum.

Q. But you kept this account in the regular course of your business?

A. Yes.

Q. As bookkeeper for the Camp?

A. Not exactly. If you call that a "bookkeeper", I'll let it go as that; just I was keeping all these memorandums.

Q. Don't each one of these, except the $820.00, the last item, don't they truly represent the total of each final statement that you sent out to the Camp for payment?

Mr. ULRICH: If Your Honor please, if he's going to check these figures against the statement figures, I don't know whether the witness has put down the adjusted amounts [627] as between the different funds or not; I think, in fairness to the witness, he ought to be able to see what he's talking about; personally I don't know what those totals are; the witness can tell us, but he ought to be able to look at his data.

(Testimony of Monty Roque.)

Mr. MOORE: Showing you United States Exhibit "F"; do you know what that is?

A. Yes; this is the first statement for May.

Q. That's the statement for May that appears here in this book, doesn't it?

Mr. ULRICH: Show him the book; it doesn't appear as the May amount.

Mr. MOORE: It's been testified here that the May bills are rendered in June, that is, they are paid in June. Now, under June don't you find $901.65?

A. Well, yes; yes, this is May 7th payment for the month of April. If you want to know, Your Honor, these amounts that is recorded here is the amount of checks that were received; whenever Mr. Lee Chong receive it he would tell me and I would just put it in that memorandum.

Q. Then the total of United States Exhibit "F" appears here under date of June 7th, doesn't it?

A. It does, yes.

Q. $901.65?

A. Exactly.

Q. And then here is United States Exhibit "I"; you notice that the original bill was entered for $857.78, and then that $37.65 that's been testified to has been taken off, and the total is $820.13?

A. Yes sir.

Q. And that appears here, doesn't it?

A. Yes sir. [628]

Q. You say you also kept this account of Mookini's?

A. Yes sir.

(Testimony of Monty Roque.)

Q. And this is the only account that he ever had with you?

A. That's all.

Q. And this started on September 9th, is that right?

A. Yes, that's what it is.

Q. Did he ever buy anything else in the store except what's listed in this book?

A. Oh, he did, from time to time, he bought goods from the store.

Q. And they were delivered out to his house?

A. Delivered up to his house.

Q. And that started practically from the time that you started dealing with the C. C. C.?

A. I don't know just how soon he started buying goods from us, but he did before.

Q. It wasn't very long after you started, though, that he started buying goods?

A. No.

Q. They were delivered out to his house, that is, his own home?

A. To his own home.

Q. Is there any place down at the store that you got a document or a list or anything of what was delivered to his house?

A. Well, there is "cash and carry"; it goes to Cash and Carry record, you see.

Q. "Cash and Carry"; have you got such a record down there?

A. No, I don't handle the bookkeeping of any daily sales of any articles.

(Testimony of Monty Roque.)

Q. Who does? [629]

A. They have this Chinese bookkeeper there.

Q. And is this supposed to have the record of all the cash sales?

A. The daily sales, yes sir.

Mr. ULRICH: Your Honor, I object to the question as absurd; that is cash sales.

Mr. MOORE: Well, he pointed to it; I don't know what he means.

A. I didn't say it is in that book——

Q. You say somebody else kept those cash records?

A. This is the way I understand, the way they keep the cash sales over there: At the end of every day they would check up how much they have sell off according to what it shows in the cash register, and that's the record that they have on the book.

Q. Well now, when you deliver stuff some place don't you have some sort of slip or something?

A. Well, they generally pick up the goods from the store and pay for it, and then ask to be delivered to their house.

Q. Don't you keep any record of the slips that go out?

A. No, not "cash and carry"; they just go ahead and count out the amount of goods they pick up, and they pay for it.

Q. You've told us a little while ago that they were delivered to Mr. Mookini's house?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Now, wasn't there any slip that went to Mr. Mookini's house with these goods?

A. Sometimes I think they did.

Q. And don't you keep a copy of that slip that goes out?

A. Not when they pay cash. [630]

Mr. ULRICH: If Your Honor please, I don't want to make any statement to mislead counsel or curtail his cross-examination; this book does contain a list of cash receipts for cash sales each day; for what he wants to make use of it. (Mr. Ulrich hands book to Mr. Moore).

Mr. MOORE: Am I correct, Mr. Ulrich? (No response).

Q. You knew Chun Yau Chee?

A. Yes, I know him.

Q. Did he keep some Chinese record down there?

A. Yes sir.

Q. And he's gone to China?

A. He's gone, yes.

Q. Now, you had another boy down there who used to keep books, didn't you; you had a boy down there by the name of Henry Lee, didn't you?

A. After Mr. Chun Yau Chee he left for China, naturally they had to have somebody to keep the books, and it's the boy that took the bookkeeping there, or whatever you might call it.

Q. And he kept all these records afterwards?

A. Yes sir.

(Testimony of Monty Roque.)

Q. And this Henry Lee, he understands English, doesn't he?

A. Yes sir.

Q. Educated here?

A. Yes sir.

Q. And he keeps those in English, doesn't he?

A. Yes sir.

Q. And he keeps the records of the cash sales?

A. He must.

Q. Who is this man McGregor we heard so much about?

A. He's a friend of Mr. Lee Chong.

Q. He's a sailor, isn't he?

A. Sailor? No. [631]

Q. What is he?

A. He is working in the Navy Yard—civilian employee.

Q. Bookkeeper of some kind, isn't he?

A. I don't know just exactly; I understand that he's assistant paymaster at the Navy Yard.

Q. Civilian assistant paymaster?

A. Yes sir.

Q. And he also assists Mr. Lee Chong in making up his tax returns, doesn't he?

A. Yes sir.

Q. Now, down there at the store you're there practically all the time, aren't you, Mr. Roque?

A. Yes sir.

Q. And do you know this man Colman, a big tall fellow, a young fellow about 25 or 26?

(Testimony of Monty Roque.)

A. I don't know him by name, but maybe I can identify him. Two tall boys that used to be in the Camp they come down a couple of times.

Q. Another one, tall, skinny, and had a little gold in his teeth, or something?

A. I don't recollect.

Q. Do you know this fellow Gibson?

A. I don't know them but I heard their names, Gibson and Colman.

Q. You've heard the names, but you don't knw them?

A. I heard the names but I don't know them.

Q. Isn't it true, Roque, that these boys, particularly Mookini and Cunningham, used to go in the store practically every time they were in town, go in there, and Lee Chong set up booze for them?

Q. What do you mean "every time"? [632]

Q. Practically every time they were there, isn't that right?

A. I could only recollect—well, several times; I wouldn't say every time.

Q. And they had you bring in the ice and ginger ale when they ran out, didn't they?

A. I do sometimes, yes.

Q. And Lee Chong set up the booze, didn't he?

A. Beg pardon?

Q. Lee Chong furnished the booze?

A. The booze?

Q. Yes.

A. No sir.

(Testimony of Monty Roque.)

Q. He furnished cigars and cigarettes, didn't he?

A. Yes; that's the custom of our place to give cigars and cigarettes, and ginger ale sometimes.

Q. You said that when they changed this Exhibit "J" and Miles asked you to put the word "Canteen" on it, is my understanding correct that Miles —sometime during that conversation at the store, when you were there; I think you said McGregor was there—made a telephone call to Schofield?

A. Yes sir.

Q. And he asked for a man by the name of Colman?

A. He did.

Q. Then, when he got whoever he was talking to, what did he say; what did Miles say over the telephone?

A. He asked if Mr. Lee Chong there.

Q. Then what?

A. He says,—well—I don't know just what the answer at the other end, but according to what he said, he said, "Did you bring any statement—"

Q. Then was a little time that he was listening?

A. Yes. [633]

Q. Then what was the next conversation?

A. He said, "Get hold of that statement and bring it in town to me, and don't let anybody see it;" that's as much as I can remember.

(Testimony of Monty Roque.)

Q. In other words, after he had got whoever he wanted to talk to, he said, "Is Lee Chong there?"

A. Yes sir.

Q. Then, "Did you bring a statement?"

A. Yes sir.

Q. Then, "Get hold of that statement and bring it in to town, and don't let anybody see it."?

A. Exactly.

Q. And you don't know what statement he referred to?

A. I know the statement, because I was the one who made the statement.

Q. And what statement was that he was talking about?

A. That was the statement of the $72.50 items, the statement that I gave to Mr. Lee Chong the time he went to the Camp with the statement of the amount of September.

Q. That is, Defendants' Exhibit 1, is this the one?

A. That's the one.

Mr. MOORE: I think that's all.

Redirect Examination

By BARRY S. ULRICH, Esq.

Q. And the statement for the month of September was just the regular statement including the full amount for that month?

A. Yes sir.

(Testimony of Monty Roque.)

Q. So that, you had sent out with Mr. Lee Chong a statement for the month of September, giving the full amount, and then, just on a separate bill, this little item list of $72.50? [634]

A. Yes sir.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

The COURT: The Court will adjourn at this time until 9:00 o'clock tomorrow morning. Remember the admonition heretofore given you. Mr. McGregor, be here at nine tomorrow; we're going to adjourn until that hour.

Mr. MOORE: May it please the Court, there's an error, there has been a duplication. I'll ask, with counsel's consent, that this book be marked "4", as your other is already "3".

Mr. ULRICH: Any mark, yes.

Mr. MOORE: Since the introduction of the personal account of Mookini it has been erroneously designated as Exhibit 3, and wherever it has been spoken of it should be changed to Exhibit 4.

(Adjourned—11:49 a. m.) [635]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Wednesday, May 22nd, 1935; the Plaintiff appearing by Assistant United

States Attorney Willson C. Moore; the defendants being present with their respective counsel;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States, stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll also so stipulate.

The COURT: Let the record show that the respective counsel stipulate that the jury is present.

SAMUEL P. McGREGOR, Sr.

was duly called and sworn as a witness for the Defendants, and testified as follows:

Direct Examination

By BARRY S. ULRICH, Esq.

Q. Will you state your name, please? [636]

A. Samuel P. McGregor, Sr.

Q. Mr. McGregor, what is your occupation?

A. Clerk in the Disbursing Office, United States Navy Yard.

Q. Are you a civilian or a military employee?

A. Civilian employee.

Q. How long have you been with that office?

A. 16 years.

Q. Mr. McGregor, do you know Mr. Lee Chong, one of the defendants in this case?

A. Yes sir.

(Testimony of Samuel P. McGregor, Sr.)

Q. And how long have you known Mr. Lee Chong?

A. I believe it's over 25 years.

Q. You knew his father before him, I believe?

A. I knew his father and the family.

Q. What has been the character of your association with Mr. Lee Chong during the time that you have known him; have you known him well, or otherwise, and in what way?

A. In an advisory capacity after the father's death.

Q. Have you had anything to do with helping him with his books at any time?

A. Yes; make out his income returns and tax returns, year after year, and audit all his accounts.

Q. And have you been in the habit of being at his place of business from time to time?

A. Yes sir.

Q. How has that happened and what was the nature of your business down there?

A. Well, when I come in from my work I generally stop there and do my marketing and purchase my vegetables and wait for my family to call for me. [637]

Q. Now, Mr. McGregor, do you know Mr. Miles, lately the Director of the C. C. C. Camp?

A. Yes sir.

Q. Do you know Mr. Mookini, the other defendant in this case, who sits here?

A. I do.

(Testimony of Samuel P. McGregor, Sr.)

Q. Have you had occasion to meet a man named Cunningham, who was connected with the Camp?

A. Yes sir.

Q. Do you recall Mr. Cunningham being at that place of business of Mr. Lee Chong's or the Lee Chong Company late sometime last Summer, that is, the Summer of 1934, at a time when there was under way some sort of discussion or conversation about a luau that was to be held at the Camp?

A. Yes sir.

Q. I'll ask you, do you recall any conversation or anything occurring within your knowledge relative to the relations of Lee Chong Company to the Camp before this conversation I am about to call your attention to, or was that the first time that you personally came into contact or negotiated between the Camp and Mr. Lee Chong—the conversations I have called your attention to?

A. Well, I knew that Lee Chong Company was furnishing the C. C. C. Camp with supplies such as vegetables and fruits and so forth, but on this particular instance the discussions was on the line of the luau.

Q. Was this the first discussion or conversation that you had any part in relative to the Camp?

A. Yes sir. [638]

Q. Who was present—about when was this?

A. It was about a week or ten days before the luau, anyway.

Q. A week or ten days before they held the luau?

A. Before the luau.

(Testimony of Samuel P. McGregor, Sr.)

Q. Who was there?

A. Mr. Cunningham, Mr. Mookini, myself; Lee Chong ought to be there—whether he was in and out—I think he was there.

Q. What was said; what was the nature of the discussion?

A. The nature of the discussion was along the lines of how much quantity of pork, poi, mullet fish, kukui nut, and dried fish——

Q. Would be required for the luau?

A. Would he required for the luau.

Q. At that time was anything said about how any of these articles were to be charged, or anything of that kind?

A. No, no discussion.

Q. Was any order placed by anybody?

A. No, no order; it was simply Mr. Cunningham had a tentative list and he was consulting me in my past experience in the luau game, and he wanted to get a knowledge of how much quantity is required to feed 250 to 300 men.

Q. Do I understand that there was no order given at the time?

A. No, no orders given.

Q. The practical amounts were not yet estimated?

A. No, not at all.

Q. The best of your recollection—do you know Monty Roque, the bookkeeper or clerk or whatever he is at the Lee Chong Company?

A. Yes, I do. [639]

(Testimony of Samuel P. McGregor, Sr.)

Q. To the best of your recollection, was he present at the time of that conversation?

A. I couldn't say.

Q. What?

A. I couldn't say whether he was present; maybe he was; I couldn't say; I don't remember.

Q. Well, did he have any part in the conversation when talking with you there about the luau?

A. I don't believe he was there.

Q. You don't recall him as having been a party there?

A. I don't recall.

Q. Now Mr. McGregor, was there a later time at which you were present at a conversation between anyone connected with the Camp and Lee Chong Company, or any representative of that Company, relative to this luau order?

A. In connection with this luau, no.

Q. Not in connection with the luau; in connection with the bill, the invoice, or anything of that kind?

A. No, no.

Q. Do you recall any conversation with Mr. Miles, any occasion when Mr. Miles came to the place of business of Lee Chong Company?

A. Yes, I do.

Q. When was that?

A. That was after the luau, oh, I think a month after; that was in the month of October, that's right.

Q. And who was present on the occasion of that conversation that you've now referred to as having taken place in the month of October? [640]

(Testimony of Samuel P. McGregor, Sr.)

A. I was there, and Monty was there.

Q. By "Monty" you mean Monty Roque?

A. Monty Roque.

Q. The bookkeeper?

A. Yes. Both of us was there; I was on vacation time.

Q. Can you place it as nearly as you can in the month of October; was it in the first part of the month, or the latter part of the month?

A. It's in the first part of October.

Q. First part?

A. Yes; I believe it's on October 4th or 5th.

Q. You and Monty were there alone when Mr. Miles came in?

A. Yes, we were present in the office.

Q. Well, what happened? Let me ask you this: Besides yourself and Monty and Miles—

A. Mr. Miles came; just the three of us; Mr. Miles came in that morning wtih his luggage, and he inquired where Mr. Lee Chong was, and either myself or Monty told him that Mr. Lee Chong had gone to the C. C. C. Camp that morning, early; and he said he wanted to get in touch with him, so there was some discussion between Monty and Miles in reference to certain statements.

Q. As nearly as you can remember, what was that conversation, if you recall?

(Testimony of Samuel P. McGregor, Sr.)

A. It was in connection with a statement that he wanted to get from Lee Chong; so, finding that Lee Chong had gone to Camp, he asked Monty if he couldn't get in touch with the C. C. C. Camp right away by 'phone, and Monty connected up, and Mr. Miles communicated with the C. C. C. Camp.

Q. You mean, talked over the telephone?

A. Yes sir. [641]

Q. Did you hear what was said?

A. Right in my presence.

Q. Will you say what was said?

A. His conversation was that he inquired for a Mr. Colman on the other end; he wanted to speak to Mr. Colman; then he inquired whether Lee Chong was still there, and then I heard him saying, "Get hold of that statement, don't let anyone get hold of it, and bring it in direct to me today"; that was the conversation on this occasion.

Q. "Get hold of this statement and don't let anyone get hold of it"?

A. Yes.

Q. "And bring it in to me right away"?

A. Right away.

Q. Was there any discussion at that time, if you recall, relative to making any charge against a Canteen Fund?

A. Yes sir. The discussion came up between Monty and Miles, whether they had made two statements instead of one statement for that one particular charge on the luau; it appeared to me that Mr. Miles' chief objection was that he wanted—

(Testimony of Samuel P. McGregor, Sr.)

Mr. MOORE: Just a minute; I object to what "appeared" to him.

Mr. ULRICH: That may be stricken—what "appeared". You must state the best of your recollection what Mr. Miles really said.

A. Yes sir, that's my recollection, because he went over with me on it; so I told Monty, "I don't think there ought to be any objection to making two statements for one order of that date"; and he wanted a statement of the $72.50 [642] segregated and charged it to the C. C. C. Camp Canteen.

Q. Well, do you remember any discussion as to whether or not a separate statement had already gone out with Mr. Lee Chong?

A. My recollection was that there was a separate statement.

Q. What about the charging to the Canteen? Mr. McGregor, I show you the Defendants' Exhibit 1 and the Government's Exhibit "J", both of them being statements in the amount of $72.50, with the same items—keawe wood, chicken wire, and so forth —and one of them billed to "C. C. C. Camp" alone, without anything else, and the other billed to "C. C. C. Camp Canteen"; and I ask you if you know anything about those statements and if you can throw any light on them?

A. Yes; this is the statement that was made on the day I was there,—

Mr. MOORE: Indicating which?

Mr. ULRICH: Indicating Exhibit "J".

(Testimony of Samuel P. McGregor, Sr.)

Q. With the word "Canteen" on?

A. Yes, with the word "Canteen" on.

Q. That was made out the day that you were there?

A. Yes sir, in my presence; I advised Mr. Roque to go ahead and make out a statement with that "C. C. C. Camp Canteen" on it.

Q. And Mr. Miles was there?

A. Mr. Miles was there.

Q. And it was marked "Canteen" by his request?

A. Marked "Canteen" in his presence.

Q. Whether this was the one that Mr. Lee Chong had out there, or not, do you know, by referring to Exhibit 1?

A. I couldn't say. [643]

Q. By "out there" I mean out at the Camp.

A. I know that he took out a statement out there; but I am saying this is the statement, the statement with the certification on there, is the one that was prepared in my presence in Lee Chong's office.

Q. And that is United States Exhibit "J". Mr. McGregor, after this statement had been made out, as you say, according to Mr. Miles direction, did anything else happen, or did that end the conversation?

A. No; he was satisfied; and I assured Mr. Miles that as soon as Lee Chong got back from the Camp I'll see that he signed his name to the statement.

(Testimony of Samuel P. McGregor, Sr.)

Q. At any later time, Mr. McGregor, did you have any conversation with Mr. Miles, Mr. Lee Chong, or anyone, concerning the Lee Chong account with the C. C. C. Camp?

A. Yes; I was at the office again on October 12th.

Q. By "the office" you mean the office of Lee Chong Company?

A. The same office, yes; when Mr. Miles came in, I believe, shortly after 10 or 11 o'clock.

Q. On October 12th?

A. On October 12th.

Q. What did he say there?

A. First remark—he came in—when he saw Mr. Lee Chong; "Mr. Lee Chong, I thought you were my friend, but you sure got me screwed tight"; that was in a smiling way, not in an angry way; "I thought you were my friend, but you sure got me screwed tight."

Q. What else was said?

A. I was rather surprised; and Mr. Lee Chong said, "Why yes, I am always your friend." "Well, if you're my friend, [644] why did you go and tell about a certain note that I have with you; you know I told you to keep that—"

Mr. MOORE: Just a minute; I object to that.

Mr. ULRICH: Just a minute; I wouldn't have you testify about that.

The COURT: Mr. McGregor, confine yourself to what Miles said and what Lee Chong said.

(Testimony of Samuel P. McGregor, Sr.)

Mr. ULRICH: Really, the witness is doing that.

A. That was the general conversation between them.

Q. Pass over whatever reference may have been made to this thing you just talked about, and go on with the rest of the conversation; what happened?

A. After they was quieted down he presented a check for payment.

Q. Presented a check for payment?

A. Yes.

Q. Do you know whether Mr. Miles had at that time already been removed as Director of the Camp?

A. No.

Q. What?

A. No, I don't.

Q. You don't know?

A. I don't know.

Q. You didn't know at the time?

A. I didn't know at the time.

Q. He presented a check; what kind of a check was it?

A. He presented a check for payment of the September account; and in going over the check, that is, Mr. Lee Chong and Monty came in, in going over the check there was a certain dispute; they were disputing that the sum of the check was not the sum of the statement that was rendered.

Q. Do you remember the difference between the check as [645] presented and the bill, or did you

(Testimony of Samuel P. McGregor, Sr.)

get into that discussion far enough to know what the controversy was?

A. Yes; the difference was $37.65, I believe; that was the amount that they were disputing; and another dispute was that they were asking where was the check of the $72.50.

Q. So far as the $72.50 is concerned, by that are you referring to this $72.50 on the separate bill that you have seen made out before?

A. Yes sir, I am referring to that bill.

Q. That was the keawe wood, and so forth, for the luau bill?

A. Yes sir.

Q. Is this the first time that you heard anything about any $37.65?

A. Yes, that was the first time I ever——

Q. What was said about the $37.65?

A. I asked Miles, "What is the discrepancy in the check?" And he told me that this $37.65 was paid erroneously sometime in June, that is, for the May account, so he is deducting it from the amount of the statement of September.

Q. What more was said about the way it was erroneous, or anything of that kind?

A. Well, he said it shouldn't have been paid; so I asked Mr. Miles, "Well, what seems to be the error in this $37.65?" "Well," he said, "It wasn't meant to pay during that month"; and I said, "Well"—I questioned him about it—"how do you intend to pay that bill?" He said, "I meant to pay it from the Canteen Fund." "Oh, I see; have you

(Testimony of Samuel P. McGregor, Sr.)

a Canteen Fund?" He said, "Yes." "You have a checking account?" "Yes." "Well, all you have to do," I said, "if you have erroneously drawn $37.65 from one account all you [646] have to do is to draw $37.65 from one account and refund the account where you have erroneously drawn."

Q. Instead of deducting it from Mr. Lee Chong's?

A. Instead of deducting from this check.

Q. What was done about accepting or not accepting the check with these deductions?

A. Well, Lee Chong refused to accept the check, on my advice; I told him not to accept the check until we have further discussion on it. Miles was in a hurry; he had another appointment at another place, so after that he left, and left us with no check at all, he packed the check along; and we made arrangements to meet him later in the afternoon of the same day at Schofield Barracks at the C. C. C. Camp.

Q. Then did you meet him later at Schofield Barracks that day?

A. So, that afternoon Lee Chong and I went to the C. C. C. Camp, and we got to the main office, where we saw miles there, and there was quite a disturbance in that locality; and I insisted on seeing Miles; I said, "Miles, we are here to straighten up"; and in the meantime the afternoon paper had been published, with big headlines "Miles resigns"; so we wanted to get everything settled; I was under

(Testimony of Samuel P. McGregor, Sr.)

the impression that he was getting things settled; so we got Miles over, Miles and myself and Lee Chong all filed into the C. C. C. Camp office there;——

Q. Who was there in charge then?

A. Beg your pardon?

Q. Who was there?

A. Mookini was in this building with the new gentleman that's in charge now; Mr. Yates.

Q. The new Camp Director? [647]

A. Yes, the new Director; he was introduced to me as Mr. Yates and as successor to Miles then; and I introduced myself and Mr. Lee Chong, and I told him that we were there to settle some payments of some accounts; and in the meantime Miles had gotten there before us and had turned over the check to Mr. Yates, and Mr. Yates recalled and said, "Is this the check?" "Yes". So, in the discussion I asked that the amount of the check was not correct and there is a short change of $37.65——

Q. More than that, wasn't it?

A. (continuing): and I had to go back; and Mr. Miles before leaving us in the office told me that a Mr. Colman had charge of his Canteen checking account and if we would come that afternoon it would be settled with the full amount by issuing a Canteen check for the short change of $37.65, and that we'll get also the $72.50 from the Canteen check.

Q. That is, the understanding was that you were to get this shortage from the Canteen Fund?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes, from the Canteen Fund; so I asked Mr. Miles, "Mr. Miles, where is the Canteen checks?" He said, "Mr. Colman is not here, I don't know where he's gone to, and I guess you have to wait until sometime later." So, with that unpleasant atmosphere in that particular moment, why, I decided to accept the check and on one condition, that we were accepting the check as part payment on the total of the bill; so I dictated—I asked Mr. Mookini if he couldn't make out a receipt, and I dictated the receipt;——

Q. How did you happen to have Mr. Mookini write out the receipt or take the dictation?

A. Mr. Mookini was sitting at a typewriter, so I went over [648] and asked hm if he wouldn't be kind enough to let me use the typewriter or he can take the dictation from me, so he took the dictation from me and he typed out the receipt; then I had Mr. Mookini to certify that it is the same receipt, and then I went over to Mr. Yates' desk and had him sign; and of course I had Lee Chong sign first; and we left the place immediately.

Q. I show you United States Exhibit "K", and also the Defendants' Exhibit 2, the one being a carbon copy of the other so far as typewritten matter thereon is concerned, and ask you whether or not you identify those as the original and carbon of the receipts that you dictated and had signed at that time?

A. Yes, this (indicating) is the original, and this (indicating) is the carbon where I had Mr. Yates sign.

(Testimony of Samuel P. McGregor, Sr.)

Q. And on the carbon which was taken back by Mr. Lee Chong there is the signature of Mr. Yates?

A. Yes sir.

Q. And of Mr. Mookini?

A. Yes sir; I left this at the Camp.

Q. And that (indicating) was left at the Camp?

A. Yes sir.

Mr. ULRICH: (showing document to jury): This is the same receipt to which your attention has been called before, acknowledging of all except the balance of 110 dollars.

Q. Mr. McGregor, in the course of your visits to the Lee Chong Company's place of business while this C. C. C. Camp business was under way, did you ever have occasion to see any of these people connected with the Camp at the Lee Chong Company place of business, drinking?

A. Yes sir. [649]

Q. What did you have occasion to see in that regard?

Q. Well, on several occasions I saw Mr. Cunningham with some liquid refreshment; I couldn't say whether it was gin, but it appeared to be gin—sometimes it's brown colored—and lots of chipped ice on the table; and sometimes Mr. Mookini is there with Mr. Cunningham at the table, they have the same thing.

Q. Did you have occasion to notice where the liquor came from, that is, the hard liquor, any gin or whiskey?

(Testimony of Samuel P. McGregor, Sr.)

A. I think they brought their own liquor; that is, I couldn't say, but I know that they brought their own liquor there.

Q. You have know Lee Chong for a great many years, have you not?

A. Yes sir.

Q. Does he drink at all, himself?

A. No.

Q. Did you ever see any liquor in the store there, kept by the store, in the nature of whiskey or gin?

A. No.

Q. What kind of liquor have you see there?

A. They always have Chinese liquor, in the big round bottle; sometimes I think it's oke; a sort of very mild, I don't know what you call it, Chinese wine; it's bootlegging oke.

Q. Did you have occasion to notice who was doing the real ordering of the groceries or things from Lee Chong Company, so far as you knew?

A. Yes sir.

Q. Who?

A. Mr. Cunningham.

Q. Mr. Cunningham?

A. Mr. Cunningham was represented to me as the man that [650] does all the buying; he frequently discussed with me how those boys out there eats a lot and they have a laborer's stomach, so naturally he would have to buy plenty.

Q. What about Mr. Mookini; did you see him around Mr. Lee Chong's place of business very much at all?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes sir.

Q. When?

A. Well, when he comes in and drops in, and then goes off, and comes in together with Cunningham for a little while, and he goes off; sometimes they come in together; that's the way they come in together; he uses a Packard car, and drops Cunningham there, and sometimes he stays a while.

Q. Who was there most—Cunningham, or Mookini?

A. Mr. Cunningham is there, well, sometimes twice a week, and sometimes more.

Mr. ULRICH: That's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. How long have you been working for Lee Chong?

A. Beg Pardon?

Q. How long have you been working for Lee Chong?

A. I didn't work for him.

Q. Well, you made out his income tax returns?

A. Yes, I do.

Q. You keep a few books down there, don't you?

A. Not books; just auditing.

Q. Just what?

A. Auditing their books.

Q. You get paid for that?

A. No sir.

Q. And for checking and advising Lee Chong, you don't get paid for that? [651]

(Testimony of Samuel P. McGregor, Sr.)

A. No sir.

Q. Not a thing?

A. No sir.

Q. You don't get any groceries for nothing?

A. Nothing; I pay for my groceries.

Q. In other words, you stop at Lee Chong's, and have been doing it for a number of years, helping him make out his income tax returns, auditing his books, and advising him in business transactions, and you never charge him something for it?

A. No sir.

Q. And he's never given you any remuneration of any kind whatsoever?

A. Well, given remuneration—there's no money remuneration; sometimes we get vegetables, and that's all.

Q. Does he furnish you with all the vegetables?

A. Not furnish; whenever there's left over, what you call, too much of one kind, he says, "I have too much of this here, and you can have it", and I take it; otherwise I pay for everything I get.

Q. You know Mr. Deville here, don't you?

A. Yes, I certainly do.

Q. Do you remember having a conversation with him down at Pearl Harbor?

A. Yes sir.

Q. About November 1st?

A. About that time, I guess.

Q. Do you remember he asked you a question about this September luau of the Civilian Conservation Camp?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes sir. [652]

Q. And you told him they held this luau about September 1st?

A. Sometime in there.

Q. You told Mr. Deville that?

A. September 1st?

Q. Yes, 1934.

A. My mind must have been fresh at that time when I told him "September 1st", and it must be so.

Q. And do you remember telling Mr. Deville that you saw them in Lee Chong's store—that is, by "them" I mean Mookini and Cunningham—a couple of days before this luau?

A. Yes.

Q. You told Mr. Deville that?

A. Yes.

Q. And you told Mr. Deville, didn't you, that Mr. Cunningham had the list of goods that were needed, but that Mookini did the ordering?

A. No, I did not.

Q. You didn't say that at all?

A. No, I did not.

Q. You also told Mr. Deville at the time of this conversation I have just referred to that you heard no mention at that time as to how the goods or the order of this luau was to be charged?

A. No.

Q. You didn't say anything of that kind?

A. No.

Q. Well, you testified here a little while ago that upon the occasion that you went in there when

(Testimony of Samuel P. McGregor, Sr.)

Mookini and Cunningham were talking about these articles for a luau, that you didn't hear at that time anything mentioned how the goods were to be charged?

A. No, I didn't hear; that's when the discussion was on the [653] quantity of the different articles.

Q. What I'm asking you, didn't you tell Mr. Deville that these goods were not to be charged to any particular account?

A. No, I did not.

Mr. ULRICH: Are you asking this witness whether he told Mr. Deville about whether there was a discussion about how the goods were to be charged, or, that there was nothing said about how the goods were to be charged?

Mr. MOORE: I asked this witness about three times now if he told Mr. Deville that when Mookini and Cunningham came in and discussed this luau affair, that is, when he was speaking to Deville about this, didn't he tell Deville that there was nothing mentioned as to how the goods were to be charged.

Mr. ULRICH: If the witness understands the question.

A. That was at the time we were discussing on the quantities.

Mr. MOORE: Did you tell Deville that there was nothing said as to how the goods were to be charged?

A. Nothing was said.

Q. You didn't tell Deville that?

A. I told Deville.

(Testimony of Samuel P. McGregor, Sr.)

Q. You told Deville?

A. I told Deville that there was no discussion about how the thing was charged; at that time we were discussing on the quantities of the luau; I didn't meet him after.

Q. Do you know what day of the week it was?

A. Beg pardon?

Q. Do you know what day of the week it was this discussion you tell about? [654]

A. I couldn't recall; it was some week or ten days before the luau took place, anyway.

Q. It was immediately preceding the luau?

A. It was what?

Q. It was within a day or two immediately preceding the luau?

A. No.

Q. You were out at the luau yourself, weren't you?

A. I was invited there, yes.

Q. I am asking you, were you out there?

A. I was out there, yes sir.

Q. You were invited out there by Mr. Mookini, were you not?

A. Yes sir.

Q. And Mr. Lee Chong was out there?

A. Mr. Lee Chong was there.

Q. And his family?

A. And his family was there.

Q. Now, you say the next time you heard anything about this luau affair was on the 4th or 5th of October?

(Testimony of Samuel P. McGregor, Sr.)

A. I didn't hear any more about the luau affair on the 4th or 5th, but the discussion came up when Miles came in.

Q. Well, that was about this luau order, wasn't it?

A. No, about these charges.

Q. Well, isn't that the bill for the luau?

A. I guess so.

Q. And you say at that time this document, which is United States Exhibit "J", was made up at Miles' request?

A. Yes, in my presence.

Q. And you saw Monty Roque type it out?

A. Yes, he typed it there. [655]

Q. And on that particular day he put the word after "Camp", that is, the word "Canteen" after "C. C. C. Camp"?

A. Yes sir.

Q. And you're sure it was on the 4th or the 5th?

A. It was on that day.

Q. That is the first time that you saw Miles in Lee Chong's office after this luau?

A. Yes, sir, after the luau.

Q. And that the next time you saw Miles in Lee Chong's office was the day he came down with the check?

A. Yes sir.

Q. And the check was short two amounts—37 dollars something, and $72.50?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes sir. You see, the check was short of $37.65, but the $72.50 was on the separate account, we expected to get a different check for that.

Q. What you refer to when you say that the check was short $37.65, you mean $37.65 short of the total amount that appears here on United States Exhibit "H"; you'll see that the difference between these two documents, that is, "G" and "H", is $72.50, you see the difference in totals there?

A. Yes.

Q. And that this amount, that is, instead of getting a check for $454.10, it was that amount less $37.65?

A. No; this is only a statement for that one order; the statement that I referred to is for the whole month.

Q. That's United States Exhibit "I", that is this one here (indicating); you see that there's $37.65 taken off?

A. Yes.

Q. And that comes in this particular luau bill? [656]

A. That $37.65 was not in this luau bill at all.

Q. Oh yes, you're right. Do you know what day of the week it was that you say you were in there on October 4th or 5th?

A. I couldn't say what day of the week.

Q. You say you were in there on October 12th; do you know what day of the week that was?

A. Yes; I was there October 12th.

(Testimony of Samuel P. McGregor, Sr.)

Q. What day of the week?

A. I couldn't say whether it's a Friday or a Saturday.

Q. Well, how do you know at this time that it was October 12th?

A. How did I know——

Q. How do you know at this time that that particular day was October 12th?

A. Well, because I had referred to my receipt that I dictated to Mookini.

Q. And that's the only way you remember?

A. Well, I know it was October 12th.

Q. You have an independent recollection, then, that it was October 12th?

A. It was October 12th.

Q. Do you have any independent recollection of the exact day it was, either as to the date of the month or the day of the week that this conversation took place between Mookini, Cunningham, and other members in the store as to the quantities for this luau?

A. I don't remember what day of the week it was, but I know it's a week or ten days before the luau.

Q. You don't know the date of the month, whether that was the 20th of August, or the 29th of August, or the 27th [657] of August, or what it was, do you?

A. What do you want me to answer?

Q. You don't know the exact date, do you?

A. No, I couldn't tell you the exact date.

(Testimony of Samuel P. McGregor, Sr.)

Q. You say that you've seen a lot of these C. C. C. men in there drinking at Lee Chong's place?

A. I didn't say "a lot of C. C. C. men"; I saw Cunningham, and at times I saw Mr. Mookini, and on one occasion I think I saw Miles.

Q. Did you ever see Colman?

A. Colman—I don't know who he is.

Q. You don't know who Colman is?

A. No.

Q. Did you ever see anybody else come in with Mookini or Cunningham or Miles?

A. Well, in one instance I saw a Korean boy or a Chinese boy; that's only in one instance.

Q. And they had a drink, then?

A. Well, they were drinking something.

Q. Well, it wasn't buttermilk, was it?

A. Beg pardon?

Q. It wasn't buttermilk they were drinking, was it?

A. Well, I don't know; you see, the office is separate; I pass there and I know this crowd is in there and I go about my business and go out.

Q. But you say that you know that these men bring their own liquor in there, is that right?

A. I do.

Q. And how do you know that?

A. Because I seen Cunningham, myself, coming in with a bottle in his pocket. [658]

Q. With a bottle; was it wrapped, or unwrapped?

A. Unwrapped.

(Testimony of Samuel P. McGregor, Sr.)

Q. Unwrapped?

A. Yes. He invited me to have a drink; I says, "No, thank you."

Q. Any other occasions you ever see anybody take a bottle in there?

A. Well, on another occasion I know the bottles is already there; I didn't see them taking it there.

Q. And you say, because you saw Cunningham go in there one time with a bottle, that these fellows always brought their liquor in?

A. Well, he's a frequent spectator there, and that's why on one occasion I saw him bring his own liquor there.

Q. And on many other occasions you've seen him drinking in there, isn't that right?

A. Yes.

Q. Did you ever go over there to see what they brought, or anything like that?

A. No.

Q. Never did?

A. No.

Q. Well, you testified, I believe, that Lee Chong Company never bought any liquor except Chinese wine, or something; that's what you told us?

A. Not Lee Chong; the store; that is, Mr. Chun Yau Chee always had Chinese liquor there for the workmen.

Q. What time do you go to work at Pearl Harbor?

A. When I first started?

(Testimony of Samuel P. McGregor, Sr.)

Q. Now, last year.

A. What time I go to work? [659]

Q. Yes, go to work.

A. I report at my office 7:45.

Q. And you're through at what time?

A. 4:15.

Q. And during that entire time you're employed at the Pearl Harbor Navy Yard?

A. Yes sir.

Q. And last year how much vacation did you get?

A. Something like three weeks, I believe.

Q. Then you were never at Lee Chong's store during this period from the first of April to some time, well, through the month of October,——

A. Well, I was there——

Q. Now wait a minute; through the month of October until after you got through work, with the exception of that time you were on vacation?

A. Yes sir. Now that's not speaking of Saturday and Sunday, on which I don't work, I am there.

Q. Saturday and Sunday?

A. Yes, I don't work on Saturday and Sunday.

Q. Do you go there every Saturday and Sunday?

A. If I happen to drop in there when I have nothing to do, coming back from doing my marketing; occasionally there Saturday and Sunday, but that's not because of Saturday and Sunday.

Q. You make this place a sort of hangout?

A. It's not a "hangout" for me; it's the place where I go and do my marketing and stop for my vegetables.

(Testimony of Samuel P. McGregor, Sr.)

Q. And on each occasion, each day, as I understand it, your family comes there and picks you up and takes you home?

A. Yes sir. [660]

Q. There isn't any other place in town that you do that thing, is there?

A. No.

Q. And you have been friendly with Mr. Lee Chong for a long time, haven't you?

A. I know him ever since he was a boy working for his father.

Q. You say that Cunningham was in there twice a week, sometimes more?

A. Yes sir.

Q. And what time of day would you see him?

A. This is always after 4:30.

Q. After 4:30?

A. Yes sir. When it's early it's on a Saturday.

Q. You say you have done auditing down there; how many bookkeepers have they got?

A. How many bookkeepers have they got?

Q. Yes, how many sets of books do you go over?

A. Well, I only get a set of books when it's interpreted to me from Lee Chong's son when we go over.

Q. You don't audit the books that Roque keeps?

A. No, that's the Chinese work.

Q. What?

A. No; the Chinese book.

Q. You don't audit Monty Roque's books?

(Testimony of Samuel P. McGregor, Sr.)

A. Why, Monty is only a clerk that takes down what you call orders and makes up statements; he's not a bookkeeper.

Q. In other words, the Chinese give to you the figures from their Chinese thing, and you make up the tax returns, it that it?

A. Yes sir, I do. [661]

Mr. MOORE: That's all.

Re-Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Just one question: When was it you said you had your vacation last year?

A. During the month of October.

Q. Beginning about when; the first of October, or——

A. Shortly after the first.

Q. You've testified to the time of the conversation in Mr. Lee Chong's office about the 5th of October, when Miles came in there and talked over the telephone to the Camp, and so forth; were you on your vacation at that time?

A. Yes sir.

Q. And were you still on your vacation on the 12th, when these other conversations took place?

A. Yes sir.

Mr. ULRICH: That's all.

Mr. MOORE: No further questions.

ROBERT K. MOOKINI

being duly called and sworn as a witness in his own behalf, testified as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Your name is Robert K. Mookini, is that right?

A. Yes sir.

Q. You are one of the defendants in this case?

A. Yes sir.

Q. How old are you, Mr. Mookini?

A. 35 years old.

Q. Are you married, or single?

A. Married. [662]

Q. Any children?

A. Yes; I have a boy attending St. Louis College.

Q. You have been connected with athletics very considerably here in the Territory, have you not?

A. Yes, I have.

Q. What have you done in that regard?

A. Done officiating since 1923 in the major leagues here; football, basketball, track, swimming, boat races; in 1918 I was clerk of the course for the horse race meet at Waikiki; I have done mostly officiating.

Q. You have made trips to the Mainland with some of these teams?

A. I left here with the Hawaii J. O. G. squad in 1932 for the Olympic Games.

Q. What school did you graduate from?

(Testimony of Robert K. Mookini.)

A. McKinley High School.

Q. And what business have you been in since you graduated?

A. While attending high school, during my sophomore year, I entered the employ of the Consolidated Amusement Company as apprentice in projection.

Q. Did you continue in the employ of the Consolidated Amusement Company?

A. I continued with them until 1933, putting in 17 years of service with them, through all sorts of work.

Q. Principally what was the nature of your work with the Consolidated Amusement Company?

A. I handled the exclusive distribution of films throughout the Territory; in fact, I was their film man, I handled the whole thing beginning with the distribution. [663]

Q. Was your employment with the Consolidated Amusement Company the last employment that you've had in the Territory prior to taking up the work that you took up with the C. C. C. Camp?

A. Yes sir.

Q. When were you first appointed by the C. C. C. Camp or the authorities there?

A. January 29th, 1934.

Q. How did that come about?

A. Several days prior to the day of my appointment I happened to meet a friend up town, and he told me, "Bob, they're looking for a recreation offi-

(Testimony of Robert K. Mookini.)

cer or quartermaster officer at the Capitol Building"; so I dropped in there and I inquired who I was to see, and was referred to Mr. J. W. Lloyd. I walked in and told him that I was an applicant if there was any vacancy available and I gave him my name. He looked at me; "Are you Bob, the football referee?" I says, "Yes." He says, "That's all; I'll let you know in a couple of hours or tomorrow." The following day he called me up and told me to come down, so I came on down, and he told me, "You have qualifications for recreation officer; the Governor just told me you are a good disciplinarian; he recognized your name and wanted to make sure if you were the football referee, and I said yes."

Q. Who was the Governor of Hawaii at that time?

A. Governor Judd.

Q. Lawrence Judd?

A. Yes.

Q. Did you take—were you appointed at that time?

A. I was appointed January 29th; that was two days later. [664]

Q. And did you go out to the Camp immediately?

A. I went out to the Camp on February 13th to supervise the construction of the mess hall and the barracks and the sleeping quarters for the men.

Q. At the time when you first went out to report for duty at the Camp, who was the Camp Director?

A. Major Mahaffy.

(Testimony of Robert K. Mookini.)

Q. When, if you know, did Mr. Miles become Camp Director?

A. Mr. Miles became Camp Director on about April 16th.

Q. Not until April 16th?

A. Yes sir.

Q. When Mr. Miles, however, joined the force out there at the Camp he was assistant director something or other, was he not?

A. Yes sir.

Q. When?

A. Well, I remember February 1st he was with us in the office at the Capitol Building; the date of his appointment I don't know; he may have been appointed a couple of days before the time I went to work with him.

Q. The Camp, I understand, started about the 12th or 13th of February?

A. No; the preliminary setting up of the Camp started around February 13th, but the Camp really got into operation March 6th.

Q. You were out there at that time, from the beginning?

A. From the beginning; I moved the first contingent out there from Honolulu.

Q. Your office, as I understand, was first "recreation officer"?

A. Yes sir. [665]

Q. Do you recall when Major Mahaffy left the Camp and Captain Miles became Camp Director?

A. Yes sir, I do.

(Testimony of Robert K. Mookini.)

Q. When was that?

A. April 16th. They were having a lot of trouble then; I saw in the papers that Mahaffy was let go and Miles as Camp Director to take charge April 16th, and that was further confirmed by Mr. J. W. Lloyd.

Q. I believe there was a time when, in addition to your duties as recreation officer, you were given certain duties in connection with the Mess?

A. Yes; I had various other duties outside of that Mess work.

Q. When were these duties in connection with the Mess given to you?

A. The latter part of March, around the 22nd or the 23rd; and during that time Mr. Miles came over and told me, he says, "Bob, we're running behind; have you any suggestions how we can keep this Mess from going in the hole?" I was taken—my duties were to condition the men; during that period my time was taken up from half past five in the morning until half past six in the evening. I told him, "Check your storeroom and find out how much canned stuff you've got; then one way you can do it is to run your supplies down and limit your unnecessary purchases and try and run it down." He followed out that advice of mine as I suggested, and they came out with a saving of $344.87, something like that. Prior to that time Major Mahaffy came to me, around the same period, and said, "Bob, if we don't save any money it means I've got to pay

(Testimony of Robert K. Mookini.)

out of my pocket; my month's pay check will have to be taken by the finance officer at Fort Shafter." [666]

Q. Was Major Mahaffy still there at the time you began the duties in connection with the Mess?

A. Yes sir.

Q. What did you do—it's generally been spoken at this trial that you held office as Mess Officer or something of that kind; just what were your duties, and what did you do in connection with the Mess?

A. Inspect the fruits and vegetables, meats, superintend the feeding to see that the boys got enough to eat, and the food prior to being served, *to had* to go in there and find out whether they had put in their proper—sometimes I have to check up whether fresh stuff had gone into the meals; in other words, that there was nothing like trying to camouflage old meat in the stew; it was my duty to see that their stuff was first grade in the meals.

Q. So far as the actual placing of the orders for the stuff that was shipped out there to the Mess, as a usual thing did you have anything in particular to do with that?

A. No; although I was Mess Officer, that all was delegated by Miles to Cunningham, being the chief steward.

Q. Did you on any occasion order the goods for the Mess?

A. Yes; in October; when Miles was let go, with Cunningham.

(Testimony of Robert K. Mookini.)

Q. Cunningham and Miles went at the same time?

A. Miles went first.

Q. And you remained on there after they had gone?

A. After Miles was given the privilege of resigning, I was made Acting Camp Director pending the appointment of Mr. Yates.

Q. And you did some ordering; that would be in October some time?

A. Yes sir. [667]

Q. Then there came a time when this investigation was commenced, when you yourself were suspended out there?

A. I was suspended a week later.

Q. Mr. Mookini, did you ever know Mr. Lee Chong here prior to the time that he commenced to deal with the C. C. C. Camp?

A. I never knew there was a Company as Lee Chong Company, I didn't even know a Company existed by that name.

Q. When was the first occasion you had to meet Mr. Lee Chong?

A. I met Mr. Lee Chong out there some time in April; I presume it was about the first week of April. I happened to come in the office there, and there was Cunningham, Lee Chong, and Miles;——

Q. By "the office" you mean the Camp office?

A. The Camp office out at Schofield Barracks; and Miles called me over and he says, "This is Mr.

(Testimony of Robert K. Mookini.)

Lee Chong, who will furnish us all our fresh vegetables and fruits." I turned around to Lee Chong and says, "What we want is quality;" I says, "God help you if you give any cumshaw to anybody."

Q. During the time, after Mr Lee Chong had commenced delivering goods out there, during the month of April—well, the remainder of the month of April, we'll say, do you recall that you had occasion to go over to Mr. Lee Chong's place of business at all?

A. I came in with Mr. Cunningham about that time, around that month, too; we were on our way to the Metropolitan Meat Market; we tried to get some hamburger—this is the way it is; hamburger at the Post Exchange they want 18 cents a pound for it, either that or we had to buy a quarter [668] carcass at 13 to 14 cents a pound and had to make our own hamburger, but we didn't have any equipment out there; at the same time, Miles wanted to have some of this stuff; so Miles told Cunningham and I to go down to the Metropolitan; and on our way up we stopped at Lee Chong's for prices and wanted to know if there was any fluctuation of prices at any time of his goods.

Q. Do you remember the Mothers' Day dinner?

A. Yes sir.

Q. That was before that?

A. Yes sir.

Q. So far as you can recall, were you ever in Lee Chong's place of business at any time before that, excepting that time about the hamburger?

(Testimony of Robert K. Mookini.)

A. No, only that time. I'll clarify this more; although I was assisting with the Mess out there, I had several other duties to perform outside of that; I had the Camp policing out there, I had to see that the men got their sick leave, and had to tend to the rooms out there where I had to break down and assign the men to the various tents; as Camp director on top of that I had to see that the men's luncheons were delivered to the outside field.

Q. Now, Mr. Mookini, do you recall any discussion out there at the Camp relative to a Mothers' Day dinner that was contemplated at any time before the dinner was had?

A. Yes, about the first week of May.

Q. Along about the first week of May. Well, who participated in the conversation and what was said at that time, as nearly as you can recall?

A. Cunningham came over to Miles and I that was in the office, and Cunningham suggested that Mothers' Day was [669] sort of a semi-holiday, or something to that effect, and wanted to know if Miles would agree to having a celebration out there, being that the boys were all from town. Well, we thought it was a good idea, and Miles told me, "Help on this dinner and you handle the entertainment and the athletic program; in the meantime I'll try and get Acting Governor Brown to come on down here and give us a talk on Mothers' Day." So Cunningham spoke up, and he says, "By the way, we'll have a lot of candy and fruit and all that stuff; it would

(Testimony of Robert K. Mookini.)

look good if the boys could take it right after the meal and sit around with their parents; and the only way you could do it is to put it in paper plates and paper cups." So Miles says, "We can take care of that by having it put in as vegetables." "Captain," I says, "I think you're wrong; you better check that up." I walked away; I says, "You better check that up before you do anything like that;" then something called me out to do some other work, and I left. That's all that happened at that time, so far as Mothers' Day dinner was concerned.

Q. Was that Miles' suggestion, that they might buy paper plates and put them as vegetables, but you said you didn't think he could do that but he better check it up, and you went away?

A. Yes sir.

Q. Anything said about flowers, or do you recall?

A. Yes; the subject of decorating the mess hall came up, about getting flowers, but I didn't pay any attention; I had gone.

Q. Mr. Mookini, did you have anything at all to do personally with placing that Mothers' Day order? [670]

A. I did not.

Q. Were you over in Lee Chong's place of business at any time prior to the Mothers' Day dinner, even talking about the Mothers' Day dinner?

A. No.

(Testimony of Robert K. Mookini.)

Q. There's been testimony in this case about a conversation at which you were present with certain persons there prior to the luau; do you recall that conversation?

A. Yes, I do.

Q. That took place?

A. Yes.

Mr. MOORE: What conversation do you refer to?

Mr. ULRICH: Referring to the one in which McGregor was telling about what they had on the luau.

Q. No preliminary conversation before Mothers' Day program at all?

A. No.

Q. Now, to stop for a moment and take up another line: You heard Mr. Cunninghm testify in this case, didn't you?

A. Yes.

Q. You heard him testify to the effect that during the months of April, May, and June you got groceries for yourself on personal account from Lee Chong's and had them camouflaged in the C. C. C. Camp bills; you heard that testimony?

A. Yes, I did.

Q. Is there a particle of truth in that testimony?

A. Well, he's not telling the truth; I can use words stronger than that, but he's not telling the truth.

Q. Did you ever have any conversation with Mr. Cunningham in Mr. Lee Chong's presence, or any-

(Testimony of Robert K. Mookini.)

where else, where the [671] matter of Cunningham's OK'ing bills in which your personal groceries were to be camouflaged on C. C. C. Camp bills, was discussed?

A. I never had any such conversation.

Q. Was there ever such a talk at all?

A. No.

Q. Was there ever a time when a matter of that kind was discussed between yourself and anybody?

A. No.

Q. Did you ever hear it suggested that there was ever such an item in anybody's mind until you heard this witness Cunningham testify on the stand?

A. I never made any such conversation; that's the first time I heard a thing like that, was on the stand.

Q. It has been testified by Mr. Cunningham that during the month, I believe it was the month of June, you took over a hundred dollars worth of groceries of your own and had them charged on the C. C. C. Camp bill; you heard that testimony?

A. Yes, I did.

Q. What was happening in your home in the month of July?

Q. I had my wife in the hospital; she was operated on.

Q. Did you use any such amount of groceries as a hundred or more dollars worth in that month?

A. No; my wife does the buying for that house.

Q. Or any month, for that matter?

(Testimony of Robert K. Mookini.)

A. No, never.

Q. You testified that you had nothing to do with the giving of the Mothers' Day order. Were you there when the Mothers' Day order was delivered?

A. No, I was not.

Q. The testimony in the case has been to the effect that the Mothers' Day order was delivered on the morning of [672] *of* the day before Mothers' Day?

A. I was not there.

Q. Mr. Gunningham, I believe, testified to the effect that you were at the mess table having your breakfast at or about the time that that order arrived, and that he brought a bill in to you on the mess table there; is that true?

A. No.

Q. Were you having your breakfast at the Mess out there that morning?

A. I always have my breakfast right after the calisthenics hour, that's half past five; at six o'clock I have breakfast.

Q. Will you remember, if you can, what you were doing on that day, the day before Mothers' Day, in the morning?

A. The day before May 12th orders were issued by Captain Miles that our trucks were to be serviced; a periodical inspection of trucks; because they were carrying the men to and from the field work; so I occupied the first half of the morning up to Wahiawa Service Garage.

(Testimony of Robert K. Mookini.)

Q. So that, when the Lee Chong order arrived you weren't even in the Camp, to the best of your recollection?

A. No; I didn't even know the stuff was there.

Q. Mr. Cunningham has further testified to the effect that you were there, that he went over and told you that he had some liquor for you;——

A. Yes I heard him say that.

Q. (continuing): and that later that evening you told him to bring it over to your tent, and that later that evening he brought a package of liquor over to your tent, containing 3 bottles of whiskey and 3 bottles of gin; you heard that testimony? [673]

A. I heard him say that.

Q. Is there a particle of truth in that testimony?

A, He's lying.

Q. Did you ever get any liquor from Mr. Lee Chong?

A. No sir.

Q. Either as his guest or by way of purchase?

A. No.

Q. Whatever liquor you may have had in your tent at any time was gotten where?

A. I bought it myself; in fact, I had liquor at all times.

Q. So far as you can recall, at or about the time of this Mothers' Day dinner did you have any liquor in your tent?

(Testimony of Robert K. Mookini.)

A. In fact, we had it from the day we went out to the Camp.

Q. You did have liquor there from the time you went out to the Camp?

A. Yes.

Q. Where did you get your liquor as a rule?

A. I would get it from the Waikiki Liquor Store; get it from the Tacoma Brewing, over here; get it at the Chinese store at the corner of Maunakea and Hotel.

Q. Mr. Cunningham has testified to the effect that these bottles of gin, as I remember his testimony, were Manila Gin; is that right, Mr. Moore?

Mr. MOORE: Yes.

Mr. ULRICH: Did you ever have any Manila Gin?

A. That's the first time I have known about Manila Gin was when Cunningham gave me a drink of it.

Q. Was that the kind of gin he used to have?

A. Yes, he used to drink a lot of that; and Holly Gin.

Q. Did you ever have any Manila Gin in your tent, so far as you remember? [674]

A. No; I had Boston Gin.

Q. There's a little boy, not yet 21 years old, a young fellow—you know his name?

A. Lloyd?

Q. Who testified to the effect that he had helped carry that liquor, as I recall it, and that the next

(Testimony of Robert K. Mookini.)

day—which would have been Mothers' Day, by the way——

Mr. MOORE: The day after.

Mr. ULRICH: (continuing): you called him into your tent and gave him a drink, or, I believe he said, "a shot" of gin?

A. The day after Mothers' Day?

Mr. ULRICH: I think that was the evidence.

Mr. MOORE: As I recall it.

Mr. ULRICH: Yes, the day after Mothers' Day.

A. It couldn't be; I was not in Camp.

Q. You were not there in Camp?

A. No; I left there about 7:30 in the morning.

Q. Where were you the day after Mothers' Day?

A. I came in to take my wife to the Clinic.

Q. You mean Guy Milnor and these doctors over here?

A. Yes.

Q. And you were not at the Camp all day?

A. No; that's when I got the bad news that my wife had to be operated on as soon as possible.

Q. Did you ever give that boy a drink in your tent?

A. I did, just before I left Camp at the termination of my service out there.

Q. What happened on that occasion? [675]

A. I told him to help me pack my suitcase, and after I looked in my suitcase I had about less than a third of a bottle of gin, so I told him, "Here, I

(Testimony of Robert K. Mookini.)

am leaving the Camp; if you want a drink you can have this bottle." He told me, "Well, I'll drink it before supper"; so he took the bottle and put it in the bushes back of Captain Miles' tent.

Q. Is that the only time that you ever gave that boy a drink in your tent?

A. In my tent.

Q. Well, did you give him a drink anywhere else at any time?

A. Well, I meet the boys up town, maybe having a glass of beer at the Young Bar here.

Q. I mean out at Camp there?

A. No.

Q. There has been testimony to the effect, as you have heard it, that a day or so after the Mothers' Day dinner you came in to Mr. Lee Chong's place of business and were handed certain bills or invoices, which you OK'd at the request of Mr. Roque, I believe it was; do you recall that incident?

A. Yes, I do.

Q. First, before—I'll withhold that question for a moment. I show you the Government's Exhibit "C", which it has been testified is the original bill that went out with the Mothers' Day order;——

Mr. MOORE: That's a copy of the original.

Mr. ULRICH: The carbon copy of the original bill that went out with the Mothers' Day order. Mr. Lee Chong's testimony has been that he had

(Testimony of Robert K. Mookini.)

the original bill signed by Mr. Cunningham after he had checked off the goods delivered, and [676] left the carbon copy with him. Showing you Government's Exhibit "C", I call your attention to the fact that your signature apparently appears on that bill, and I'll ask you to state when and under what circumstances you placed that signature there?

A. It's a matter of form out there before we place on the files.

Q. It's a matter of form before it's placed on the files?

A. Yes. It may have been about five or six days later, or before the next audit of the supplies out there.

Q. Mr. Cunningham's testimony was to the effect that he took it to you while you were sitting at the breakfast table and that you OK'd it; you heard that testimony?

A. Yes I did.

Q. That is not true?

A. No, I didn't sign any document.

Q. As a matter of fact, you got this after he had placed it on the file?

A. He takes in all those bills, those invoices, first; then, maybe about two or three days later, he'll bring it down and place it on our desk, either in Miles' basket or mine. In looking it over and seeing some has no signature, as a matter of form we sign it.

(Testimony of Robert K. Mookini.)

Q. That is, the understanding was when he brought those invoices and filed them that they were already signed?

A. Yes.

Q. If he didn't sign them, you signed them?

A. Yes; we thought it was an oversight on his part.

Q. You hadn't even checked or attempted to check the contents of the document?

A. No. [677]

Q. Now I show you United States Exhibit "D" and Exhibit "E", being the documents which it has been testified to by Mr. Roque were changed at Mr. Cunningham's direction; and calling your attention to the signatures on those documents, and ask you to state to the jury the circumstances under which you signed those writings?

A. I remember signing it at the Lee Chong office after I had returned from the Clinic and been informed by Dr. Milnor that my wife had undergone a serious operation; I come down to the market purposely to get something for the house for supper; and as I walked in there Roque handed me this; I didn't know what it was; I said, "What's this?" He said, "Cunningham came in"; so I signed it; but when just about to sign it I turned around, and Cunningham had come in there; I didn't know he had been there; I said, "Is this thing O. K., Jack?" He said, "Yes, it's all O. K."; so I signed it and put it back on the table.

(Testimony of Robert K. Mookini.)

Q. When you first went in there Cunningham hadn't yet come?

A. Yes.

Q. And he came while you were being handed this?

A. Yes. I didn't know there was anything wrong until September 13th, when Mr. Lloyd informed me about it.

Q. Well, at the time you didn't go over the items of this thing?

A. No, I did not.

Q. You just took Cunningham's word for the fact that it was O. K.?

A. Yes.

Q. You signed one with your signature, and then you just hurriedly OK'd the other? [678]

A. Yes.

Q. Do you know what happened to these documents after you signed?

A. Cunningham picked it p.

Q. Cunningham picked up what?

A. He held it in his hand, and he was going back to Camp; I don't know whether he did or not, but I know I left it there and Cunningham had it in his hand; so I left the Lee Chong Company.

Q. And, as I understand, it wasn't until along in September some time that your attention was called to anything having to do with the contents or changes or anything in this stuff?

(Testimony of Robert K. Mookini.)

A. Yes, when Mr. Lloyd informed me that charges had been filed against me by somebody; he wouldn't mention the name.

Q. Mr. Mookini, you've heard the testimony of Mr. McGregor and, I believe, possibly another witness, in effect that a short time before the luau or Labor Day——

Mr. MOORE: Just a minute; I object to the form of that question,—I see how it's going to be proposed—as leading and suggestive. I think that this witness is perfectly capable of testifying without telling him what somebody else said.

Mr. ULRICH: I don't have to tell him; he's been sitting right here; this isn't a case where we're bringing a witness from the outside. I am just trying to conduct the examination as clearly as possible. I think it's perfectly proper, asking him for his version of it.

Mr. MOORE: I'll submit it. [679]

The COURT: Was the question completed? I didn't understand it.

Mr. MOORE: No, the question wasn't completed, Your Honor.

Mr. ULRICH: No. I was calling his attention to certain testimony, and asking for his comment on it; I don't believe I had finished.

Mr. MOORE: May it please the Court, that's just exactly what we should obviate—to call attention to what somebody said.

(Testimony of Robert K. Mookini.)

Mr. ULRICH: All I wanted to do was to save time. It will be quicker to withdraw the question and put it another way.

Mr. MOORE: All right.

Mr. ULRICH: Mr. Mookini, do you recall a conversation prior to the luau—you recall the luau, do you, in September?

A. Yes, September 1st.

Q. A conversation prior to the luau, at which there were present yourself and certain other persons, at Mr. Lee Chong's place of business?

A. Yes; Cunningham, myself, and McGregor; I don't know whether Lee Chong was there.

Q. What about this man Roque, the bookkeeper; do you know whether he was there?

A. I don't think he was there.

Q. Well, did anything in particular happen then—what did happen?

A. Well, when we were there the subject of the luau was brought up there; that was the early part of August—anyway, it was about two weeks before the luau, something like that, where Miles had intimated about giving a blowout out there on account of the termination of the six months [680] period which would have occurred on September 6th, so he suggested a luau. Well, we figured out we'd have to have some estimate how much it would cost to put on a luau, so while Cunningham and I were there and talking about this luau, McGregor in-

(Testimony of Robert K. Mookini.)

formed us that some of the quantities were too much and some were too little; then an argument ensued between Cunningham and McGregor as to the proper procedure in putting on the luau.

Q. In other words, there was talk about what you should have for the luau?

A. Yes, about an estimate.

Q. And McGregor was telling them how much?

A. Well, McGregor said, "I ought to know; I put on a lot of luaus."

Q. Well, was any order placed at that time?

A. No, no order placed.

Q. Anything at all said about the way in which anything was to be charged?

A. No.

Q. As a matter of fact, Mr. Mookini, did you have anything at all to do with the placing of the luau or Labor Day dinner order?

A. No I did not; I had the hauling of it.

Q. What was the sole contract, did you say, that you had with that order?

A. I was sent in with a truck by Mr. Miles.

Q. You went in with the truck?

A. Yes; I came on the Camp station wagon, and the big truck came in with a couple of helpers and Cunningham. [681]

Q. That is the day that the luau order was delivered to the truck?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. At Mr. Lee Chong's place of business?

A. Yes sir.

Q. Were you around there all the time while they were loading the truck?

A. I had to appear in the Police Court for a traffic violation, and I got soaked a $5.00 fine.

Q. What kind of a violation?

A. Boulevard stop at King and Kapiolani, I believe; I forgot to make a stop, and got pinched, so I had to appear in Court.

Q. So you came in with the truck and then went to the Police Court to see about this traffic violation?

A. Yes; they had a long calendar; in fact they issued a penal summons; I couldn't get in there to make an appearance; so I had to make an appearance there.

Q. And you were fined $5.00 for failing to make a boulevard stop?

A. Yes.

Q. Did you have anything more to do with taking the goods out to Camp?

A. No, I returned myself after that.

Q. Did you ever have anything to do with checking over the goods to see what goods were delivered or weren't delivered?

A. No sir. While I wasn't there the boys did the checking.

Q. Did you have anything at all to do with charging it, one way or the other? . .

(Testimony of Robert K. Mookini.)

A. No; Miles took complete charge of it. [682]

Q. When was the first time that you knew that there had been any changing or manipulating of this luau bill at all?

A. The day before the Primary election.

Q. What day was that?

A. About October 5th; I happen to remember that day, it was my wife's birthday.

Q. Where were you that day?

A. I was at the Camp.

Q. What happened.

A. I was at the Captain's station, I went over there to get some paper, and I looked out the door there, and there was Lee Chong coming; it was around, I should say, 7:30 or 8 o'clock;——

Q. In the morning?

A. In the morning. I said, "What are you doing here?" He said, "I want to see Captain Miles." I said, "Captain Miles gone to town half an hour ago; can I do anything for you?" He says, "Oh, he tell me to bring this out." So I said, "All right, I'll take it;" and——

Q. Bring what?

A. He had an envelope, and it had "C. C. C. Camp" on there, and I opened the thing, and, much to my surprise, I saw this itemized stuff of keawe wood and all that stuff to "C. C. C. Camp", and the other one was a statement; so I told him, "Well, Captain Miles has gone in; I'll put it in his basket." So I put it in the basket.

(Testimony of Robert K. Mookini.)

Q. So that's the first time that you knew that there was any bill of it, one way or the other, so far as that luau bill was concerned?

A. Yes sir. [683]

Q. While you were there and shortly after Mr. Lee Chong left did anything happen?

A. A telephone call came in; I answered the telephone.

Q. Who was on the other end of the telephone?

A. I got on the line, saying, "C. C. C. Camp, Mookini talking;" then from the other side, "This is Captain Miles." I said, "Yes, what is it?" He says, "Is Colman there?" I said, "Well, Colman just gone to breakfast; I'll call him." About that time I saw Colman coming in; I says, "The Captain wants you on the line." So, as I was standing by there, Colman answered, he says, "Colman talking;" Colman now took the telephone and looked at me kind of surprised and says, "Did Lee Chong come here?" I says, "Lee Chong just gone." He said, "Lee Chong gone?" Then finally he looked at me again and says, "Did Lee Chong bring anything?" I says, "Yes, he brought an envelope." He talked through the telephone and says, "Yes, there's an envelope out there." He says, "What—don't let anybody see it?" and he couldn't get on to it.

Q. This is the conversation that Cunningham was talking into the telephone?

(Testimony of Robert K. Mookini.)

A. Colman was saying this; he says, "Don't let anybody see? I can't hear you; you mean, not let Mookini or anybody see?" "Yes, all right; where do you want to meet me?" He was trying to get over the telephone; I don't know whether the connection was bad. He says, "All right, I'll be right down to the Capitol to meet you." So he told me I was quartermaster there, can't I have transportation there? I says, "If it's the Captain's orders for you to go to town, [684] surely you can have transportation." I called a service man and said, "Have transportation arranged for Mr. Colman immediately"; and Mr. Colman left.

Q. You had seen the bill after Lee Chong brought it out there?

A. Yes, but they didn't know I had seen it.

Q. Do you recall whether or not the bill that you say, segregating, as I understood you to say, this keawe wood and other items, had or did not have the word "Canteen" on it?

A. No sir; I saw it here.

Q. You saw the one, referring to Defendant's Exhibit 1, without the word "Canteen"?

A. No, the word "Canteen" was not on it.

Q. Was there anything else at all that came to your attention about that September bill; did you have anything more to do than just about finding out about it in October, as you've said?

A. In October, I didn't know about this change until I saw it out there, and then, around October 12th, Lee Chong and McGregor came out.

(Testimony of Robert K. Mookini.)

Q. That was the next time that anything having to do with this matter was called to your attention?

A. Yes sir.

Q. What happened on that occasion of October 12th

A. Well, about October 12th Mr. Yates reported to the Camp as Camp Director; I was busy with him in effecting the transfer of property as ordered by Mr. J. W. Lloyd, to get our certificates and everything ready; so about 2 o'clock or 2:30 there was an insurrection out there; Miles came out rather after he was out there;——

Q. What do you mean by an "insurrection"? [685]

A. Well, they had a riot out there; it was worse than a massacre; there was men surging into the office trying to wreck the whole office, because Miles was discharged; they were protesting and they were yelling like wild Indians out there; a bunch of them surrounded me and surrounded Yates, they dragged Yates out and dragged me out; I kept telling them, "Hold your shirts on"; in fact, I reported to Mr. Lloyd there was "something rotten in Denmark" out there.

Q. What happened?

A. Lee Chong in the meantime had come in with McGregor; I was at the typewriter fixing up some certificates for Mr. Yates; then an argument ensued over some bill or amount that was not paid; Mr.

(Testimony of Robert K. Mookini.)

Yates called me over and he says, "What are we going to do with this, Mookini?" I says, "I don't know; what is it all about?" So then, for the first time, I was informed that the Canteen was charged with this $72.50. So, after several talks between Yates and Miles and Lee Chong and McGregor—McGregor doing most of the talking for Mr. Lee Chong—McGregor then said, "We need the money to pay some of our bills; I'll take it on part payment of the account"; so I returned back to my typewriter to complete my work, when he came over and says, "Will you type a receipt out for me so that I can show we're taking it in as part payment?" I says, "O. K.", and I typed the thing out for him.

Q. I show you now United States Exhibit "K" and Defendants' Exhibit 2, and ask you if that is the original and carbon copy of what you typed at that time?

A. Yes sir. [686]

Q. Calling your attention to the signatures of R. M. Yates and yourself; do you see Mr. Yates' signature down here; is that his signature?

A. That's his signature; he signed it right in front of me.

Q. And you signed it?

A. Yes, I signed it, "Q. M., C. C. C. Camp".

Q. Mr. Mookini, did you ever have any drinks over at Lee Chong's place of business?

A. Yes, I did.

(Testimony of Robert K. Mookini.)

Q. Under what circumstances did you have drinks at Lee Chong's place of business?

A. Several times; one time, I think, with Mr. Colman; next time with Mr. Gibson, around lunch hour; we were going to go over and get a gin fizz from some of the bars, it cost 35 cents, which was too much money, so we bought our bottle and went down there and imposed on Lee Chong to give us some ginger ale or lime rickey; he gave it to us; we mixed the drinks, and went out and had lunch.

Q. Did Lee Chong ever give you any liquor himself?

A. No, he didn't.

Q. Anytime you had a drink of anything excepting—well, did you ever have any beer down there?

A. Sometimes we went and took it without asking—just raided the ice-box.

Q. There was beer there?

A. Beer, yes.

Q. Aside from beer, if you ever had drinks there, I understand you brought your own, is that right?

A. Yes.

Q. Did you ever see any whiskey or gin down there unless you [687] or someone else had brought it there?

A. No; Lee Chong never had any of that around the place.

Mr. ULRICH: If Your Honor please, I think I am through; if the Court is going to take a recess

(Testimony of Robert K. Mookini.)

at eleven I'd like to check over my notes before finally dropping the witness.

The COURT: The Court will take a recess.

(Recess—10:55 to 11:10 a. m.)

Mr. ULRICH: Mr. Mookini, just one or two more questions.

Q. It's been testified by Mr. Cunningham that upon Mothers' Day you appropriated all the cigars and cigarettes, I understand, and took them over to your tent or had them sent there to you?

A. There was no cigars and cigarettes on Mothers' Day.

Q. I mean for the luau?

A. We had some cigars and cigarettes out there.

Q. Did you have them taken over to your tent?

A. No; they were divided between Miles' tent and mine.

Q. That is, you had a sort of headquarters?

A. Yes; we put up a "fly", in other words, a canvas top, with board flooring, and there was a runway between the officers' line, as we call it; and there was musicians there that Miles brought out there, women musicians, two glee clubs out there; we had Senator Lane out there; and they were smoking, and cigars were distributed around.

Q. And that's where the cigars and cigarettes were?

A. Yes sir.

Q. After it was over, did you have them "salted away" for your own personal use, any cigars or cigarettes out of that?

A. Well, there were a few left that I kept. [688]

Q. Any considerable number?

A. No, maybe about a dozen or half a dozen, because everybody was smoking cigarettes and nobody paid any attention to it, cigars didn't mean anything that day, they were just smoking cigarettes.

Q. Were there flowers out there on Mothers' Day?

A. Leis for the guests.

Q. Any other flowers?

A. Mothers' Day we had flowers, but on the luau day we had leis.

Q. I am getting my dates confused. On Mothers' Day there were flowers, were there?

A. Yes. We had 29 mess tables in the mess hall, and on each table was a big bouquet of red and white carnations.

Q. And on the luau day they had the leis?

A. Leis, yes, the guests were given leis.

Q. Now Mr. Mookini, when goods were delivered to Camp and billed to the Camp, whether they were to go to the Mess or to the Canteen, or any other department out there, how would they be billed?

A. The way it was handled out there it was not billed any particular fund, it was just "C. C. C. Camp".

Q. And who was the person who decided out of what particular fund the payment would be made?

A. Captain Miles, custodian of the fund.

(Testimony of Robert K. Mookini.)

Q. That is, if goods came out there, part of them property chargeable against the Mess, and part of them properly chargeable against some other Fund, he would be the one that would allocate as against one fund or the other?

A. Yes. [689]

Q. Did you have anything at all to do with that?

A. No.

Q. For example, do you recall this Junior Police picnic that you had out there during the Summer time?

A. Yes, I do.

Q. Do you recall that there was a considerable order of goods for people outside the Camp entirely that was paid for out of the Mess Fund at that time?

A. Yes there were.

Q. And at other times, for example, do you recall that non-edibles were paid for out of the Mess Fund, for subsequent adjustment?

A. Yes.

Q. I call your attention to this United States Exhibit "A", to a check signed by Mr. Miles, dated July 7th, 1934, to the Honolulu Paper Company, Ltd., $19.08; did you have occasion to know whether the Honolulu Paper Company sell any eatables at all?

A. No, they don't.

Q. Do you know what that was for?

(Testimony of Robert K. Mookini.)

A. Paper plates and cups for the Junior Police picnic.

Q. And that was later readjusted from another account, was it?

A. Yes.

Q. Does that appear here?

A. No, this amount here was paid out of the money that the Police Department paid the Camp for staging the picnic, the luncheon out there, and this year the amount was paid out of the money that was deposited to the C. C. C. Camp Director's Fund.

Q. So that, in the matter of non-edibles or edibles, as [690] the case might be, the matter of paying it one way or the other was ultimately taken care of by Mr. Miles?

A. Yes sir.

Q. And the individual person, whether it's the Honolulu Paper Company, or whoever it might be, who was selling the goods would merely bill the Camp, and he would take care of the way in which they were paid?

A. Yes sir.

Q. Ever heard any suggestion that the Honolulu Paper Company was attempting to defraud the Government when they sent a bill for $19.08 to the C. C. C. Camp for paper plates?.

A. No.

Q. Or that anyone else, excepting Mr. Lee Chon, was defrauding the Government for just that sort of thing?

(Testimony of Robert K. Mookini.)

A. No sir.

Q. There has been some testimony relative to a Mr. Glowenlee; Mr. Cunningham testified to some conversation or something that took place out at the Camp relative to a meat chopper; do you know anything about that?

A. Yes sir.

Q. Will you tell the jury what happened in that regard, Mr. Mookini?

A. Mr. Glowenlee was out at the Camp soliciting business——

Q. Who is he, by the way?

A. He's a salesman for the Hurd-Pohlmann Company. Well, prior to the time that Glowenlee came out there to inform me of what Cunningham had done, I may say that during this month of May there was some steel knives bought, some were bought from Davies & Company, some were bought from American Factors, and some were bought from Hurd-Pohlmann Company, [691] depending upon the price, because the prices at different places here, one was lower than the other for certain knives; so the bill, if I remember correctly, at the Hurd-Pohlmann Company ran about $67.50, for which a purchase order was taken care of by the office over here under the heading of Camp Equipment; and those knives were taken out to Camp; and about a week later, or a month, I'm not quite sure, Mr. Glowenlee came over and told me,

(Testimony of Robert K. Mookini.)

he says, "Bob, is it customary for the cook to get any 'cumshaw'?" I says, "What do you mean?" He says, "Do you remember the knives that were bought at Hurd-Pohlmann?" I says, "Yes, about $67.50 or around that." He says, "Yes; while they were wrapping the order and it was going out the door, Cunningham was upstairs demanding his 'cut'."

Q. Demanding what?

A. Demanding his "cut" of the order.

Q. His cut?

A. Yes, his "cut"—the "cumshaw". I says, "Well, that's surprising; what did he get?" He says, "$6.75, in cash." I says, "Well, why are you bringing it up?" He says, "He's trying to pull the same stunt on the meat chopper." Cunningham, through Mr. Miles, had ordered an automatic cutter; —his contention was that the cook was so busy and there wasn't enough help in the kitchen to properly make 970 sandwiches a night, it would take the boys up to midnight, the kitchen police; so by having the slicer would split the work up or reduce it about two or three hours; so this meat chopper was delivered out there, and it cost us $185.00. Glowenlee said, "Cunningham is insisting on [692] this cut of 10% on this cutter." I told Glowenlee to wait, so I called Mr. Cunningham over to the office; I says, "Jack, I want you to tell me the truth, did you get any commission from the Hurd-Pohlmann Company on knives that you bought there?"

(Testimony of Robert K. Mookini.)

He said, "Yes, but that was for cigars; they can't find out about it; it was cash; I can tell them it was for cigars." I said, "Well, Jack, I'll have to inform the Captain, Mr. Miles." So I took it up with Mr. Miles and I told Miles, I said "Captain Miles, maybe you should know this", and I told him. He in turn replied, "I can't do anything to Jack; if I let Jack go now he'll be back in the gutter where he was before I picked him up, and Jack is a personal friend of mine." I says, "Look here, we're going to get in hot water if a man goes out and demands cuts like that." So Glowenlee came back, and presently he says, "He's still asking for the cut." I says, "I tell you what you do; give him the cut, but you let us know when; mark it, and we'll be in there to find out." Cunningham didn't appear in the Hurd-Pohlmman office for the $18.50; he stayed away.

Q. And nothing more happened about it, so far as you know?

A. No.

Q. Just one other thing. There's a witness who testified about a conversation which you're supposed to have had over the telephone when, I think this man—it was Gibson or Colman—one of these witnesses testified that he had a talk with you in which it was said that somebody was carrying on an investigation, and you said something about beating this person up, as I recall it; and then

(Testimony of Robert K. Mookini.)

there was a telephone talk in which you're supposed to have asked [693] Mr. Lee Chong to say nothing until you saw him, or something of that kind; do you recall that testimony?

A. Yes; I heard Gibson and Colman say that.

Q. What happened; did you ever have a talk about that?

A. I called Mr. Miles' attention to a remark that was made by Mr. Colman that there was a shortage in the camp, so I told Mr. Miles, "Remarks like that is not so good."

Q. That's Mr. Miles?

A. Captain Miles; I was talking to him prior to the time I was talking to Colman and Gibson. Miles told me, "No, nothing of the kind; there must be a misunderstanding." I says, "Well, Captain, if there's anything wrong out here, the best thing for you to do is to get the Government auditor to come out here and go through the whole works."

Q. Well, let's talk about the time you had a conversation with Gibson?

A. Then I told Gibson about the remark I heard that Colman had made; so I went down to the office, right at Colman's desk, and says I came there to ask him whether he made any such remark; I says, "I would sooner talk to you than going outside and talking to everybody else but the right person; I would sooner confront you with it." If he said "Yes", we were going to have it settled before Mr. Miles; if he said "No", let the matter

(Testimony of Robert K. Mookini.)

drop; I was big enough to take it up with the Director.

Q. Was there any talk about beating Colman up?

A. No such talk.

Q. Did you talk to Lee Chong?

A. Not to say anthing about it.

Q. You didn't call up Lee Chong about it? [694]

A. No, I never called up Lee Chong or said anything about it.

Q. As I understand your testimony, Mr. Mookini, you didn't know anything about any changes made on any of these bills until it was over?

A. Not until September 13th.

Q. Until after they had been made and the bill already sent in and until along about September 13th?

A. Yes.

Q. You had nothing to do with making those changes?

A. No sir.

Mr. ULRICH: That's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. You say you're a graduate from McKinley High School, and then you went to work for the Consolidated Amusement?

A. Yes sir.

Q. And you worked for them for 17 years?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Did you quit, or did they relieve you?

A. Reorganized, and I left there.

Q. You quit, yourself?

A. Yes sir.

Q. You weren't asked to resign?

A. No. The manager called me in and told me there was a reorganization, some of the directors were at odds with me; whereupon they handed me close to $750.00 as a bonus.

Q. During the time you were working for the Consolidated were you working for anyone else?

A. Not that I remember.

Q. Did you ever do any work under Mr. Arthur Powlison?

A. After I left the Consolidated; temporarily.

Q. Well, while you were working for the Consolidated weren't [695] you working under Powlison?

A. I worked under nearly everybody; I was officiating in athletics; if you call that working, it must be work; but I donated most of my services.

Q. You don't work for the Recreation Commission any more?

A. No; I went to the Camp after that time, and then after I left the Camp I went with the Legislature.

Q. You say you went out to the Camp or you started working for the Civilian Conservation Corps about January 29th?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. And the Camp itself was actually established around March 6th or 7th?

A. About the 6th.

Q. And when you first went out there you were the Recreation Officer?

A. Yes sir.

Q. And that was your sole duty, was recreation?

A. Yes sir.

Q. And didn't Major Mahaffy have to get you out of bed to give the calisthenics in the morning?

A. Nobody had to get me out of bed to do this work; if he said I did most of the work out there, that's the truth.

Q. If he said that?

A. Yes, if I did most of the work.

Q. But he didn't say that. Isn't it true that he told you that if you couldn't get out of bed he would go out and give them calisthenics himself?

A. No sir.

Mr. ULRICH: What is this; examining the credibility of this witness, or rising hours in the morning? [696]

Mr. MOORE: According to his testimony——

Mr. ULRICH: It's absurd; I submit the cross-examination is irrelevant, improper, and not along any line of the direct examination, and not directed to any proper purpose; it doesn't attack his credibility whether he got up early in the morning.

(Testimony of Robert K. Mookini.)

Mr. MOORE: May it please the Court, after listening to the testimony of this witness I marvel at the necessity of anybody else in the Camp, from what he said he has done; and I think I have a perfect right to cross-examine along the line to show that his duties weren't so "hot".

The COURT: Proceed.

Mr. MOORE: Didn't Major Mahaffy tell you that if you didn't get up and give these calisthenics that he would get up and give them himself?

A. No, he didn't.

Q. Never complained about your hours?

A. No, never; the only time we ever had any conversation was in the presence of Mr. Miles.

Q. You never talked to Major Mahaffy unless Miles was present?

A. This particular instance you're referring to happened in front of Mr. Miles. Mr. Mahaffy told me that he wanted to have calisthenics right directly after the men were inoculated. You can't take up calisthenics when a man is inoculated; he can't move his arm; in fact, it might make a reaction.

Q. And you say you were also the Camp policeman?

A. Yes, I was.

Q. That is, you went to see that the company streets and ash cans and everything there was clean? [697]

A. And everything else, including the lavatory.

(Testimony of Robert K. Mookini.)

Q. And this fellow Gibson didn't have anything to do with that at all?

A. Gibson, I helped him with all his work out there.

Q. You helped Gibson; besides doing all your own work, you helped Gibson do his?

A. Yes; I was ordered by Major Mahaffy and Captain Miles.

Q. Was it Gibson's duty to police the Camp, or was it yours?

A. At that time they didn't have any particular person; they delegated me to it.

Q. Then, you say, later on in the latter part of March you became—you took over the duties of the Mess situation?

A. Yes, I was asked to take it over and handle it.

Q. You say that Major Mahaffy came to you and says, "Now here, these mess funds are running in the hole, and do you know how we can come out of it?"

A. Miles talked to me.

Q. I thought you said something about Mahaffy saying that if something didn't change that he was going to have to put out his whole month's pay check?

A. Subsequently; he told me immediately after that.

Q. But Miles came to you first about this Mess?

(Testimony of Robert K. Mookini.)

A. Miles came to me first about assisting in the Mess.

Q. When did you start assisting in the Mess?

A. Around the 22nd or 23rd of March.

Q. And, through your magnificent efforts, they saved $344.00?

A. Through my assistance, in calling their attention to the storeroom that was overstocked.

Q. Did you ever hear of a staff-sergeant by the name of Marshall?

A. I was responsible for getting him up there to help; he [698] was there through Lieut. Pickles, who used to be up at Shafter.

Q. Who runs this—you, or the sergeant?

A. What do you mean?

Q. This Mess.

A. The sergeant was there to instruct Cunningham.

Q. Oh, he had to teach Cunningham how to cook, or something?

A. To run the Mess according to the way it was run by the Army; he wanted to teach him how to put the meals out.

Q. Isn't it true that this staff-sergeant Marshall ran that Mess during the whole month of March?

A. I don't think so; he left there around the 15th; he was assigned to the Hawaiian Division Headquarters Company, something like that, as

(Testimony of Robert K. Mookini.)

signed as cook down there; really, the whole reason why Marshall left there was because Cunningham didn't want to have him around.

Q. Didn't Marshall run the Mess or act as mess officer during the month of March?

A. No sir; Gibson and I took it after that.

Q. Didn't this sergeant immediately oversee the buying and the running of that Mess?

A. No.

Q. Well, what did he do around there?

A. He was instructor.

Q. Instructor?

A. Yes sir.

Q. Instructing in what?

A. In the running of the Mess; handling of the Mess, teaching Cunningham.

Q. And he was doing that during the month of March?

A. He had it for about two weeks; two weeks is all he stayed there. [699]

Q. Now, isn't it true that you had—showing you United States Exhibit "L"; you had $344.87 in cash left over?

A. Yes sir.

Q. And then you had about $178.00 in supplies?

A. Well, they had some inventory left at the end of the month.

Q. Well, it was about $178.00 wasn't it?

A. I couldn't say whether that was the right amount, but maybe.

(Testimony of Robert K. Mookini.)

Q. In other words, between the cash and the goods on hand there was a little better than 500 dollars?

A. Well, Judging on the canned goods in there—the principal fluctuation, of course—remember that it's from this present price list that's in vogue at the Camp Quartermaster at Schofield——

Q. Isn't it true that, between your inventory and your cash, you had a little over 500 dollars at the end of the first month?

A. I presume so.

Q. And this staff-sergeant has been a fellow that's been doing this same sort of thing in the Army?

A. The first time I met Marshall was thru Lieut. Pickles; I went down and asked Pickles to help us out.

Q. Now, you say that you inspected all these fruits and vegetables, and all that sort of thing?

A. Not all; on our periodical inspection I come through and inspected all.

Q. How often were these periodical inspections?

A. Once a week.

Q. Saturday morning?

A. Sometimes Wednesday, sometimes Saturday; Saturday morning that's when the medical officer from Schofield comes up. [700]

Q. You say that when you became Mess Officer—just what were your duties as a Mess Officer?

(Testimony of Robert K. Mookini.)

A. Supervise the Mess.

Q. And what do you mean by that, "supervise the Mess"?

A. You get out there and see that the boys get what they want to eat; see that the meals are properly placed out; see that they get plenty to eat; go through the kitchen and see that it's run according to sanitary rules.

Q. But you didn't have anything to do with ths buying of the food?

A. Because Miles left that to Cunningham to do all the buying.

Q. Miles never gave you instructions not to do any buying?

A. No, he never said anything to me, but I know that Cunningham did all that buying because Captain Miles told me "Cunningham understands the buying".

Q. And Miles gave you to understand that you were to leave that to Cunningham?

A. So he stated; I presume he meant to leave it to Cunningham.

Q. And you never did any buying at all until after Miles made is exit out there?

A. Yes sir.

Q. That's correct?

A. Yes sir.

Q. When you first became Mess Officer they were buying a few vegetables at Chun Hoon's con-

(Testimony of Robert K. Mookini.)

cession over there in the Schofield Commissary, or Quartermaster's or whatever it is; is that right?

A. They were buying from Chun Hoon.

Q. Didn't you ever go over there and place orders yourself?

A. No.

Q. Never did? [701]

A. No; that's Cunningham handled that; I know that, too.

Q. You're extra sure of that?

A. Yes, I am sure.

Q. And you never, either by telephone or otherwise, came down town to Lee Chong's to place an order?

A. No; that's the only time I ordered anything was when Miles got discharged.

Q. After his discharge?

A. After Miles was discharged.

Q. This mess officer proposition is what is commonly known in Army circles, or as we talk in the Army, as part of the "Q. M.", isn't it?

A. The Mess a part of the Quartermaster's?

Q. Yes.

A. It may be part of the Quartermaster's in the Army; it wasn't part of the Quartermaster's in the Civilian Conservation Camp, which was a similar organization.

Q. I mean that, in Army circles Mess is "Q. M."—purchases of food?

A. No.

(Testimony of Robert K. Mookini.)

Q. I understand that in the company the running of the Mess is "Q. M."?

A. Yes.

Q. But the acquiring of the foodstuffs is "Q. M." isn't it?

A. They buy from the Quartermaster; that's only canned stuffs and meats.

Q. You were a Reserve Officer once, weren't you?

A. Yes sir.

Q. And you were in the Quartermaster's weren't you?

A. Sure. [702]

Q. Are you still a reserve officer?

A. No sir.

Q. How did you happen to separate from the service?

A. I was discharged.

Q. You used to be a Second Lieutenant, didn't you?

A. Yes sir.

Q. What were you discharged for?

A. That I don't know; you have to ask Mr. McGhee; I appealed to Mr. McGhee.

Q. You don't know what you were discharged for?

A. He represented me in this hearing.

Q. You don't know what you were discharged for?

(Testimony of Robert K. Mookini.)

A. No; to present time since I was discharged I don't know why.

Q. You haven't the slightest idea?

A. No.

Q. Never asked anybody?

A. I took it up when they asked me about it, when they called me to appear before a Board.

Q. The Board that was hearing these charges?

A. Yes.

Q. You never knew what they were?

A. No. I asked them, "What are the charges?" They said, "We can't leave you know". After a while I retained counsel and Mr. McGhee appeared and asked them what it was.

Q. Didn't you ever find out what it was?

A. Yes, after I was discharged, when I went up there with Mr. McGhee.

Q. What was it then?

A. That I don't know, what the technical charge was, but I know I was discharged.

Q. You were discharged for misconduct, weren't you?

A. No. [703]

Q. And you haven't the slightest idea what you were discharged for?

A. No; because they made some charge out there, and I got hold of Mr. McGhee to represent me there.

Q. And you want this jury to believe that they made charges out there against you and you got

(Testimony of Robert K. Mookini.)

Mr. McGhee to go up there and appear for you and you did not know then nor do you know to this day what the charges were against you?

A. I found out when I went with Mr. McGhee.

Q. What were they?

A. You want me to tell you?

Q. Sure.

A. Because I helped a man out of trouble, for his wife and kids; that's what it is; that's the whole thing in a nutshell.

Q. "Covering up" for somebody else?

A. Yes; his wife and his kids needed his support.

Q. In other words, you want this jury to believe that you "took the rap"?

A. Yes, I did.

Q. And you say that you have a wife and a child?

A. Yes sir.

Q. You say the first time you met Lee Chong was out here at the Camp, I think you said it was around in the early part of April, is that right?

A. Well, about after I was introduced to him at Schofield.

Q. And you told him, the first thing you said to him was "God help you if you give 'cumshaw' to anybody"?

A. Correct.

Q. And what did your athletic duties out there consist of? [704]

(Testimony of Robert K. Mookini.)

A. Calisthenics, games, and see that the proper reservations was made at the shows; picnics;——

Q. In other words, get show tickets for them?

A. No; I made reservations, called up at the theater and told them how many men coming down.

Q. What else?

A. Picnics.

Q. Where were these picnics?

A. Swimming at Haleiwa.

Q. That was on week-ends?

A. Week-ends..

Q. These boys, as I understand, went out there to do some work, didn't they?

A. Yes.

Q. And during the day they were supposed to do a certain amount of work?

A. Yes.

Q. And some of it was making trails, and the other was reforesting out there, wasn't it?

A. That's true.

Q. And, on an average, how many hours a day would they work?

A. Not judging transportation, about five or six hours.

Q. Exclusive of transportation?

A. Yes.

Q. And they went on a ways up in the hills a lot of times to work?

A. I told you they got their calisthenics from 5:30 until a quarter to six.

(Testimony of Robert K. Mookini.)

Q. In other words, 15 minutes of calisthenics in the morning?

A. Yes.

Mr. ULRICH: If Your Honor please, I don't want to appear to be unreasonable, but I do believe that we ought to confine this cross-examination with things that have to do with the trial of this case. [705]

The COURT: Yes. The Court does not see how it's material about their calisthenics. Mr. Moore, when you get to a new line on your cross-examination, please indicate it so that we can take our adjournment.

Mr. MOORE: I think, Your Honor, that this place would be as good as any.

The COURT: Gentlemen of the jury, remember the admonition heretofore given; and be in your places promptly at nine o'clock tomorrow morning. You'll be excused at this time. Now, Mr. Ulrich and Mr. McGhee, are you ready to proceed on the matter of instructions this afternoon?

Mr. ULRICH: Mr. McGhee has been handling the instructions, and he tells me he's not ready.

(Discussion as to the time for settling instructions)

(Adjourned—11:46 a. m.) [706]

(Testimony of Robert K. Mookini.)

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Thursday, May 23rd, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States, and stipulate that the jury is present.

Mr. ULRICH: Ready for the defendants, and so stipulate.

The COURT: Let the stipulation be noted.

ROBERT K. MOOKINI

resumes the witness stand, under continued cross-examination by Willson C. Moore, Esq.

Q. Mr. Mookini, showing you United States Exhibit "C", that has our signature on it, has it not; that is the [707] voucher of May 12th?

A. Yes sir.

Q. And when did you sign that?

A. At the Camp.

Q. On the day of the delivery of the goods, or not?

A. I don't remember what day; I know, before the 20th, the next audit of the accounts out there.

Q. But you were not present when this voucher came out?

A. No sir.

(Testimony of Robert K. Mookini.)

Q. Now, with reference to the September 1st luau accounts, you say that about 10 days before that you and Cunningham were down town and you talked to Lee Chong and McGregor about what was necessary for a luau?

A. The conversation with McGregor?

Q. Yes.

A. I said, about two weeks.

Q. About two weeks?

A. About that time—a week or ten days.

Q. And all that was brought up at that time was just what was necessary?

A. Quantities.

Q. And no actual ordering at all?

A. No sir.

Q. Out at the Camp did you talk with anybody about this luau prior to coming down town on this meeting?

A. With Captain Miles.

Q. You talked to Captain Miles. Were there any estimates made out there at all that time as to what the cost would be?

A. Captain Miles was figuring on giving a luau at the close of the six months period, which was supposed to have been September 6th, but he changed it to September 1st, and [708] he requested to make an estimate of what was needed, Cunningham to fix up the list of requirements and an estimate as to how much the cost was to be had.

(Testimony of Robert K. Mookini.)

Q. And do you recall what the amount of that estimate was?

A. The estimate in the office ran about 800 and some odd dollars.

Q. And was there a cutting down of that estimate, that you know of?

A. A second estimate was taken after Miles had suggested some of the stuff was not needed on it, and he told me to get the adding machine and run it off again, and it ran something like 600 dollars.

Q. You had nothing to do with the cutting out of any of these articles on it?

A. No sir.

Q. After this time, which you say is about two weeks before the luau, that you were down town discussing with McGregor and Cunningham at Lee Chong's the items of this luau, were you ever down there after that and before the luau?

A. I came down to pick the stuff up.

Q. You came down to pick the stuff up?

A. Yes sir.

Q. Did you have anything to do with its ordering or buying, or anything of that kind?

A. No.

Q. Not a thing?

A. No sir.

Q. And the morning that you came down to get the stuff, I understand you came in on the C. C. C. truck?

A. On the station wagon.

(Testimony of Robert K. Mookini.)

Q. Well, it's a conveyance belonging to the Civilian Conservation Corps?

A. Yes sir. [709]

Q. And from there you went to the Police Station to look after a penal summons that you got?

A. Yes sir.

Q. Was there any Hawaiian pudding with that luau?

A. If you ask Mrs. Miles about it maybe she'll tell you.

Q. And did you go along with her when she ordered it?

A. No sir.

Q. You weren't in the car?

A. I drove her down.

Q. You picked her up at the Capitol?

A. Yes; she had the handling from Miles, not me.

Q. She didn't ask you where you could get this pudding?

A. No; she told me that Captain Miles had ordered her to go and order the Hawaiian pudding, and the opii, and all that stuff.

Q. And during the whole time that you were Mess Officer—I mean, before Miles' exit—you never ordered any booze?

A. No.

Q. And you're just as sure of that as anything else you've testified to in this case?

A. Yes sir

(Testimony of Robert K. Mookini.)

Q. Do you remember being called before the Federal Grand Jury?

A. I remember that correctly.

Q. And you signed a waiver before you went before that grand jury?

A. With all good intentions I came there, yes.

Q. And you were sworn before that grand jury to tell the truth?

A. Yes.

Q. And I conducted the examination on that grand jury? [710]

A. Very unfair, if I may say.

Q. Very unfair?

A. Yes.

Mr. ULRICH: If there's going to be an examination on the evidence given before the Grand Jury, I ask first to be permitted to inspect the evidence, so that I may properly object or otherwise, as the case may be. I don't think there can properly be an examination on evidence before the Grand Jury which has always been in the custody of the Government.

The COURT: At this time the Court understands that counsel is simply laying a foundation?

Mr. MOORE: That's all, Your Honor.

Q. Do you remember being asked this question:——

Mr. ULRICH: I object, if Your Honor please, to any part of the evidence before the Grand Jury being shown to the witness without an opportunity

(Testimony of Robert K. Mookini.)

given to counsel to inspect the questions and answers.

Mr. MOORE: May it please the Court, I am laying a foundation; this is data that is part of the records of the United States Attorney's office, and in the event that this defendant denies making the statements that we contend that he did make, the United States Attorney's office will produce the stenographer that took the record and prove the record.

Mr. ULRICH: (Argument).

The COURT: The Court sees no other way of laying a foundation for this impeachment except by asking this defendant whether he did not testify so and so; he cannot ask the whole thing at once.

Mr. ULRICH: Will the Court grant me the inspection of the evidence before the Grand Jury? [711]

Mr. MOORE: As I understand the rule of law, may it please the Court, with reference to documents or evidence in the hands of either counsel or memoranda in the hands of either counsel, that that memoranda, unless and until it is sought to be introduced in evidence, is not available to the other side; and, it is a further rule, as I understand, of the ethics of this profession, that no person should endeavor to prove something or to insinuate something that he cannot prove; and I, as a member of this bar and as a member of the United States Attorney's office, am following those

(Testimony of Robert K. Mookini.)

two rules, first, that I did not insinuate anything that I cannot prove, nor am I called upon to produce the information that I have to the other side until such time as it is necessary to offer that for the purpose of identification or in evidence.

Mr. ULRICH: If Your Honor please, this is an important matter,——

Mr. MOORE: Very important.

Mr. ULRICH: (continuing): and I want the Court to clearly understand at this time—I'm not attacking the credibility or the integrity of the United States Attorney at all; I am suggesting to this Court, however, that it is a fundamental rule of law that you cannot examine a witness upon a part, and a part only, of a document or line of evidence that may theretofore have been given by him; that if you're going to read anything to a witness in the presence of a jury,—or, for that matter, in the presence of a Court alone—we're entitled under the law that the entire thing shall be offered as a matter of examination of the witness, so that we'll be able to fairly show the jury or the Court [712] what the meaning of that thing is on re-direct examination. Why, he can pick out questions and answers there—I haven't the slightest objection to anything this man may have said before the Grand Jury or elsewhere being shown to this or any other jury, but I do insist that the whole of it be shown to the jury, and that we be permitted to inspect the

(Testimony of Robert K. Mookini.)

whole of it for the purpose of showing what is the true meaning, and not that a single question or answer be asked this witness without my right to know what the next question is or the next answer which might explain that or make it have a different meaning. I want this jury to have what this man said to the Grand Jury, but I want them to know everything he said. I submit I am entitled as a matter of right to the inspection of any document or deposition or line of testimony that has been given which is used as a basis for cross-examination of the witness.

Mr. MOORE: (Argument).

Mr. ULRICH: The issues before the Grand Jury were exactly the same as before the Court here, and I suggest there is something funny,——

Mr. MOORE: There's not a thing funny——

Mr. ULRICH: (continuing): trying to keep things from this jury, we've had that altogether too much here.

Mr. MOORE: I object to that, may it please the Court; his alleging "something funny" is misconduct before this Court.

The COURT: The objection is well taken. Mr. Ulrich, you have had the right to protect your clients by proper objection all through, and if you failed to do so you have been remiss in your duties, and it's not proper for you to assert it's been due to misconduct on the part of the United States Attorney. [713]

(Testimony of Robert K. Mookini.)

Mr: ULRICH: I did not intend any such interpretation.

The COURT: Your language is clearly capable of such interpretation, in the opinion of the Court.

Mr. ULRICH: I submit the objection, Your Honor.

The COURT: Please state the objection in full, so that it will be intelligible to the Court.

Mr. ULRICH: The objection is to the examination of this witness of a portion of a transcript of evidence of his taken before the Grand Jury, without counsel being given the privilege of examining the document for the purpose of re-direct examination. The objection is connected with the motion for leave to inspect the document.

The COURT: As the Court understands this document which the United States Attorney is using, it's simply his notes in preparing for this case and doesn't assume to be a transcript of the evidence given by this defendant?

Mr. MOORE: Your Honor is mistaken there. This document that I am using is a transcript of the notes of a stenographer of our office; those notes of which this is a transcript were taken in the Grand Jury room at the time that this defendant was testifying before that body, and as the statute under which it is authorized states, it is permitted for the purpose of assisting the United States Attorney's office.

(Testimony of Robert K. Mookini.)

The COURT: It is the opinion and ruling of the Court that counsel is not entitled to examine this transcript unless and until it is offered in evidence.

Mr. ULRICH: We will note an exception to the ruling of the Court.

The COURT: The exception is allowed. [714]

Mr. ULRICH: I take it that the Court also overrules the objection to the question?

The COURT: That is correct.

Mr. MOORE: I hadn't completed my question yet, Your Honor.

Q. You will recall that you were questioned before the Grand Jury with reference to these vouchers of May 12th for Mothers' Day?

A. Yes sir.

Q. Then later on you were questioned about the vouchers of September 1st?

A. Yes sir.

Q. Now, beginning with the first question that was asked you with reference to this September 1st, was not this question asked to you:

> "Now, do you know anything about these? Here's a voucher I show you under date of September 1, 1934. These initials down here in the line where it says 'Received the above articles', those were Cunningham's initials?"

Do you remember that; were you asked that question?

A. You mean the September voucher?

(Testimony of Robert K. Mookini.)

Mr. ULRICH: I object to that question and all questions, if Your Honor please, reading to this witness a part and a part only of the record before the Grand Jury.

The COURT: Let the record show that the same ruling and exception apply to all objections on this line.

Mr. ULRICH: Exception will be allowed to all?

The COURT: Exception allowed.

Mr. MOORE: The question that I just read to you, was that asked you before the Grand Jury, or not? [715]

A. I remember questions being asked, but you showed me the May 12th voucher.

Q. I am talking about the September 1st voucher.

A. Yes.

Q. Was this question asked you, or was it not?

A. I think that that question was asked; I don't remember.

The COURT: And your reply was "Yes" that these initials here (indicating on document) were Cunningham's, was it not?

A. Yes, it is.

Mr. MOORE: Referring to United States Exhibit "G".

Q. And, just to give you the context, there was another voucher shown to you, with 25 pounds of yams; the question is:

"And here's another one dated the same thing?"

(Testimony of Robert K. Mookini.)

Your answer was "Yes". Now, this next question will clear up what was intended. Wasn't this question asked you:

"And you will notice that upon this—that is, the one which is receipted for by Cunningham and the one that was presented for actual payment"—

showing document to the witness)—this is the one that was presented for actual payment, is it not?

The COURT: How is it marked?

Mr. MOORE: Exhibit "H".

A. I think that was presented for actual payment; $526.60 was the one that I saw.

Q. (continuing quotation):

"the one that was presented for actual payment—do not conform. Calling your attention the particular things: You see there is 50 pounds of [716] California yams over here and over here it is 25."

(Showing document to witness).

"And down here there are honey dew melons, pumpkin, dried mushrooms, and so forth. Those don't appear on here. Do you know anything about these bills?"

Q. Do you remember being shown those two exhibits that you have in your hand?

A. I think I do.

Q. And asked this question?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Those two exhibits are United States Exhibits "G" and "H". And your answer was:

"There is another bill on these. It runs to about $72.50, I think."

"Q. This is the bill here?"

"A. Yes, $72.50, that is correct."

Q. (showing document to witness): And you were shown this bill, is that correct?

A. Yes.

Q. Now, before we proceed any further. Did you instruct anybody down town at any time to change these bills and put in these two bills, that is, $72.50?

A. No; when I made that statement "$72.50" you wouldn't let me explain it; I was going to tell you I knew this when the thing had happened; October 5th, but you cut me short.

Q. The next question; was this asked you:

"In other words, in this bill here that is presented, which is $526.60, (Exhibit "G") there's concealed in amongst those items this for kiawe wood, chicken wire, Hawaiian pudding, chairs, etc?"

Q. You were asked that question?

A. Yes sir. [717]

Q. And you answered "Yes"?

A. Sure.

Mr. ULRICH: May I just for the purpose of the record interpose another objection at this time

(Testimony of Robert K. Mookini.)

indicating the unfairness of the line of cross-examination?

The COURT: Proceed with your objection.

Mr. ULRICH: Of course at that time the witness knew all of these things; they had been called to his attention; he was testifying along in the latter part of the month of March; I submit it's utterly unfair and improper cross-examination to indicate what he told the Grand Jury what he knew about those bills as evidence of knowledge before the bills came in, and something of that kind; and that's the line of cross-examination; and, further, without permitting us to show in what way they came to his attention. I submit the objection.

Mr. MOORE: May it please the Court, these first few questions that I am calling to this man's attention is to familiarize himself with the situation, and tie it up with what followed, so that there can be no mistake here; and that's what I am going —these particular questions right here are more or less in line with the evidence given, but it is more or less a continuity, and I think it is only fair to this witness to bring that continuity to his attention.

The COURT: The objection is overruled.

Mr. ULRICH: We note an exception.

The COURT: Exception may be allowed.

Mr. MOORE: Then the next question; was this asked to you:

"Did you know that that was put there to cover up?"

(Testimony of Robert K. Mookini.)

Q. Do you remember that question being asked you?

A. Yes, I do. [718]

Mr. ULRICH: Same objection; no showing when he knew.

Mr. MOORE: This is a very long answer, so that I'll take it by degrees. Now, isn't this what you answered:

"I instructed him to make two bills."

A. No, I didn't say "I instructed him."

Q. You didn't say that?

A. No sir.

Q. Now, continuing the same answer: Didn't you say:

"On May 16th Mr. Lloyd came down and took us over the coals for buying stuff which was like oysters and that stuff, so I, before this luau came up—the Camp was supposed to expire September 6th—about the middle of August Miles thought it would be a good idea to put on a luau for the boys out there because in the Mess Fund at that time there was money saved from the rations, so he told me to go down and price materials which would be used for the luau out there."

A. Correct.

Q. You made that statement?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Now, going on with the same answer; did you make this statement:

"So in the meantime we were having several meetings, Miles, Cunningham, and myself, around the office; * * * the fact that we couldn't buy anything out of subsistence funds that was not food.——"

Mr. ULRICH: Same objection; it now appearing he isn't even reading all of the same answer.

Mr. MOORE: I am continuing right on.

Mr. ULRICH: Is that continuing down? [719]

Mr. MOORE: Yes, right down; I have no knowledge whether it is actual or not.

A. Yes, it does.

Q. You made that part of the answer?

A. Yes.

Q. Continuing on in the same answer; did you make this statement:

"So he authorized me to go ahead."

Did you make that answer?

A. He authorized us to go ahead.

Q. Did you make that answer, saying, "So he authorized me to go ahead."

A. I didn't say "me".

Q. You didn't say "me"?

A. I said "authorized Cunningham and I to go ahead."

Q. Then you deny that you said "me"?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Going on the same answer; didn't you further continue and say:

"The first estimate submitted to Miles was about $800.00 which was ridiculous."

A. Yes, he said it was ridiculous.

Q. Did you make that statement before the Grand Jury?

A. Sure.

Q. Then, continuing:

"In getting other figures it was reduced to 600 and some odd dollars."

Q. Did you make that statement?

A. About that, yes.

Q. Will you admit making that statement?

A. Yes, about that.

Q. Now, continuing; did you make this answer: [720]

"He said to go ahead."

A. Yes, he did.

Q. In other words, you stated that before the Grand Jury?

A. Yes sir.

Q. Now, did you make this answer, continuing on with the same reply:

"So before September 1, I went down to make arrangements, bought all the stuff; I told them to send it out and to make two bills, one for subsistence, and the other for extras which could be paid out of the Canteen Fund."

(Testimony of Robert K. Mookini.)

A. No.

Q. You deny making that statement?

A. You bind me down to state—you want from me "yes" or "no" on a question like that: You asked me when I had gone down; I told you I went down to pick the stuff up; and as far as making two bills, I did not instruct them to make two bills.

Q. Just the latter part of this last question; did you make that statement before the Grand Jury, or not?

A. I don't remember this statement.

Q. Did you make it, or didn't you?

A. I made a statement there, but I did not say that I instructed them or I went down and made arrangements; I went down to make preparations that time for the quantities of an estimate.

Q. Mr. Mookini, this answer, the last portion of this answer that I just read to you, did you make that statement, as I read it, to the Grand Jury, or not?

A. I don't think I made a statement like that. [721]

Q. Well, would you deny making it?

A. Not in that form; I didn't make such a statement.

Q. Would you deny making that statement?

A. I didn't make a statement like that, not in that form.

Q. Do you deny making it?

(Testimony of Robert K. Mookini.)

A. That's the same way you pulled at me in the Grand Jury room, it's the same thing you did to me—you didn't give me a chance.

Q. Do you know what the word "deny" means?

A. You wouldn't give me a chance in there to explain anything; you were in there trying me instead of me getting up there as a witness.

Q. Did you make this answer, or didn't you?

A. I don't remember making a statement like that.

Q. Do you deny making it?

A. I don't say I deny; a portion of it may have been made; but I don't say I made a statement like that.

Q. Did you say you went down to make arrangements?

A. I went down there with Cunningham.

Q. Did you say that before the Grand Jury?

A. Yes, I said Mr. Cunningham and I was there with McGregor.

Q. Did you say you bought all the stuff?

A. No, I don't think I said I bought all the stuff.

Q. Do you deny making that statement?

A. Yes.

Q. Do you deny making this statement: "I told them to send it out and make two bills, one for subsistence, and the other for extras which could be paid out of the Canteen Fund"?

A. No; if I made a statement like that, Miles wouldn't be running around trying to change it. [722]

(Testimony of Robert K. Mookini.)

Q. Did you make that statement before the Grand Jury, or not?

A. I don't think I made a statement like that.

Q. Will you deny it?

A. Yes.

Q. Continuing with your answer; didn't you make this statement: "So when he had the goods hauled out Cunningham went out with them."

A. Yes.

Q. You make that statement?

A. Yes, I did.

Q. "I was up town".

A. Yes.

Q. You made that statement?

A. Yes.

Q. "Along about September 13th I happened to be called in to Mr. Lloyd's office, not knowing that an investigation was under way."

Q. Did you make that statement?

A. Yes.

Q. "So Mr. Lloyd called me in and asked me about it."

Q. Did you make that statement?

A. Yes.

Q. "I explained it."

Q. Did you make that statement?

(Testimony of Robert K. Mookini.)

A. When he called me in there to clarify the thing, it was on the May 12th voucher.

Q. I am asking you if you made this statement before the Grand Jury, not what you did over in Lloyd's office?

A. Yes.

Q. You made that statement?

A. Yes.

Q. Did you make this statement:

"I told Mr. Lloyd to go out to the Camp and find the vouchers for September 1 where the regulation had been violated."

Q. Did you make that statement? [723]

A. I called Mr. Lloyd's attention——

Q. Wait a minute; let me talk, don't get yourself in Lloyd's office; we're in the Grand Jury room.

A. Yes, I know.

Q. Did you make that statement?

A. I told you in the Grand Jury room that when I was hauled up for the May 12th voucher Mr. Lloyd threw the thing at me; I told Mr. Lloyd I didn't know a thing about it; this is what I told you; then I told Mr. Lloyd, "If this thing is held at me, you better go out and look at the September 1st voucher."

Q. Do you have in mind right now the last portion of this answer I read to you?

A. Yes.

Q. Did you make that statement before the Grand Jury, or didn't you?

A. You only got a portion of that.

(Testimony of Robert K. Mookini.)

Q. I can't read it all at once, Mr. Mookini; did you make that statement?

A. Something to that effect.

Q. You don't deny making it?

A. No sir; I said something to that effect, yes.

Q. "He went out there and grabbed this voucher, and I showed it to him."

Q. Did you say that in the Grand Jury room?

A. I showed him the voucher, yes.

Q. Did you make that statement?

A. Yes, I told you that I showed Mr. Lloyd the voucher.

Q. And didn't you say:

"He said it was with the full knowledge of the Camp Director which he was trying to blame me for."? [724]

A. Yes.

Q. You made that statement?

A. I think I made that statement.

Q. Now, with the May 12th vouchers, that is, you recall there was the original voucher came out with the paper plates and a lot of vegetables, opelu, opae, and a lot of those things?

A. Yes.

Q. You didn't receive any instructions to change that voucher, did you?

A. No; I told you the early part—and I have been consistent all the way through in the other instances that I have said—that Miles discussed that at the Camp.

(Testimony of Robert K. Mookini.)

Q. But you had no instructions to change it?

A. No.

Q. And you didn't go to town for the purpose of changing it?

A. No sir.

Q. And you're just as sure of that as of anything else you've told us?

A. Yes, I'm positive.

Q. Now, bringing your attention to the Mothers' Day affair; before the Grand Jury weren't you asked this question:

"Now, you recall that out there at the Conservation Camp——"

Mr. ULRICH: Same objection; improper cross-examination; impossible to re-direct.

The COURT: Same ruling.

Mr. ULRICH: Exception.

The COURT: Noted.

Q. "Do you recall that out there at the Conservation [725] Camp during this month of May that you had a special dinner or something of an affair for Mothers' Day?"

Q. You were asked that question?

A. Yes sir.

Q. And you replied "Yes"?

A. I did.

Q. And then weren't you asked this question:

"And on that particular day, I believe it was May 12th, a voucher was sent out by Lee Chong for various goods delivered. First I will show you a photostat copy of a purported voucher

(Testimony of Robert K. Mookini.)

from the Lee Chong Company dated May 12th for the C. C. C. Camp at Schofield Barracks. I call your attention to the initials down at the bottom on the line where it says 'Received the above articles' "?

Q. And your answer was "Cunningham's"?

A. You mean you have reference to that one with the lines on?

Q. Yes, Mr. Mookini, that is correct. It's a photostat of that, this one here, United States Exhibit "B".

A. Yes, you showed me this.

Q. In the Grand Jury room?

A. Yes.

Q. And your reply was that these initials were Cunningham's?

A. Cunningham's, yes.

Q. And then you were asked:

"What is the purpose for initialing that?"

And you answered:

"That he has actually received the goods."

A. Yes.

Q. Then the question was:

"The goods listed on this voucher?"

And your answer was "Yes"?

A. Yes. [726]

Q. Then this question was asked you, was it not:

"Under the same date I show you another voucher which is somewhat similar to the one which I have just shown you, only there is some discrepancies. Whose signature is this?"

(Testimony of Robert K. Mookini.)

To which you replied——

A. That it was my signature.

Q. (showing document to witness)

A. Yes.

Q. Your signature?

A. Yes.

Q. You were asked that question and made that reply?

A. Yes.

Q. And then I asked you:

"And how did you happen to receipt for those?"

A. Yes.

Q. And didn't you answer as follows:

"Three days after the goods were delivered. This was the original."

And then you indicated the one——

A. You have reference to the one I signed, now.

Q. All right. "I wasn't there when the goods arrived."

A. Well, that's indicating the first name you showed me.

Q. That's the one that Cunningham signed?

A. Yes.

"This line here represents that the goods had to be changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund."

(Testimony of Robert K. Mookini.)

Q. You made that reply?

A. I made that reply; in this particular instance I remember, too, you cut me short. [727]

Q. I have finished the question.

A. All right, read it all and I'll reply.

Q. I want to get this much.

A. I can tell what you're going to say next; I have an explanation for it.

Q. Did you make that answer, or didn't you?

A. Finish it, and I'll tell you.

Mr. MOORE: May it please the Court, I'd like to have the witness instructed to answer the question. We'll never get through here if we can't get an answer.

Mr. ULRICH: If Your Honor please, this witness, I submit, has a perfect right to explain his answer, and if counsel asks him whether he said a thing he can say whether he said it or not and why he said it and whether he would have said more if given the opportunity.

The COURT: Mr. Witness, at this time Mr. Moore is simply inquiring whether or not you testified so and so in the Grand Jury room, and your reply should as nearly as possible be confined to answering such questions. If there is any special circumstance, the Court will permit you to explain it.

A. Your Honor, the answer is long and it's not finished, and reading portions of it I can't say "yes" or "no" or say anything about it.

(Testimony of Robert K. Mookini.)

Mr. MOORE: Very well, may it please the Court; I'll read the whole answer, and then I'll have to go back and pick it out sentence by sentence.

"I wasn't there when the goods arrived. This line here represents that the goods had to be changed over——" [728]

Q. And, Mr. Mookini, you were referring at that time to the line drawn through those items, were you not, on the one that Cunningham initialed, Exhibit "B"?

A. Yes.

Q. "changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing that he had been to make the change I came in to have it done. This bill was given to me and Cunningham said that the Captain wanted to have it changed, so I compared the amounts and signed the second one as a matter of record for the files out there."

A. Mr. Moore, if I may say it, I don't think that's the truth.

Q. Did you make this answer?

A. I did not say "I came in to have it done." I told you that I happened to drop in there at Lee Chong's office, and this bill was shown to me, and

(Testimony of Robert K. Mookini.)

he said to sign it; I looked over and saw Cunningham; I didn't say I came purposely to have it done.

Q. You deny making that portion of the statement, then, that "I came in to have it done"?

A. Yes; and furthermore——

Q. Is there anything more in that that I have just read to you that you deny?

A. Yes.

Q. All right.

A. When I told you about those lines, the first time I knew [729] about it was September 13th. You hauled me up in the Grand Jury March 19th; I was aware then that this thing had been changed with those lines on there, but previously, when I had been hauled up before Mr. Lloyd, I didn't even know what was on this thing here.

Q. Now, Mr. Mookini, so there'll be no mistake, in the last answer that I read to you is there anything in that other than "I came in to have it done" that you didn't state?

A. As far as the lines on there, I want to say right now I didn't know anything about the lines or anything then.

Q. In other words, you did not state that "This line here represents that the goods had to be changed over into vegetables"?

A. No.

Q. You didn't make that statement?

A. No.

Q. Is there anything else in that answer?

A. No.

(Testimony of Robert K. Mookini.)

Q. You made the other statements in the answer?

A. I told you about how the lines were made.

Q. Did you make the other statements in the answer, or not?

A. That's all that there is in there for me to answer about coming to town.

Mr. ULRICH: I have to interpose another objection on the same line, the utter unfairness of the examination throughout. The witness has no way of knowing what the whole question is, and counsel has.

The COURT: It would appear that you and the Court don't understand this quite alike. I understood when Mr. Moore began this line of examination you stated you wanted your objection to go to this entire line of questioning?

Mr. ULRICH: Yes, Your Honor. [730]

The COURT: And that was permitted, the Court sustained the objection, and you were given an exception as to all this line; so it is unnecessary to take the time to make repeated objections.

Mr. ULRICH: Very well, Your Honor; the exception runs throughout.

Mr. MOORE: Now, Mr. Mookini, I'll read you this answer again, and then refresh your memory, and if there is anything that I read that you haven't already denied stating, kindly stop me while I am reading it and let me know whether or not you made: The answer:

(Testimony of Robert K. Mookini.)

"Three days after the goods were delivered. This was the original."

Then you indicated that that was exhibit "B":

"I wasn't there when the goods arrived."

Now here is the part which you say you deny:

"This line here represents that the goods had to be changed over into vegetables——"

Now, continuing from that statement:

"because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing he had been to make the change I came in to town to have it done."

Q. You didn't say "not knowing"?

A. I said, "Not knowing he had been to town—I didn't even know that he was down at Lee Chong's—but I was aware of the fact that he had left Camp on Sunday night, but I was not aware of him coming to town to make any change." As far as the line was concerned on the bill, I merely [731] stated to you what I was informed in Mr. Lloyd's office, that those things represent changes, so I apprised you of the fact that those lines represent changes of which Mr. Miles had already known he made.

Q. Let's see if I get you correctly; you deny making this part of the statement:

"Not knowing he had been to make the change I came in to have it done."

(Testimony of Robert K. Mookini.)

A. Yes, I deny that.

Q. All right.

"This bill was given to me and Cunningham said the Captain wanted to have it changed, so I compared the amounts and signed the second one as a matter or record for the files——"

Now, the second one——

A. Here it is.

Q. The $231.00 is the second one there?

A. Three of them are $231.00.

Q. This is the one that you referred to as having signed?

A. I think that is the one.

Q. Referring to United States Exhibit "D". And you admit making that latter part of the statement that I just read to you with reference to this particular thing?

A. That I came in there—you didn't put in there where I said that Monty Roque handed me the bill and then as I signed it I told Roque, "What's this?" He says, "Cunningham been in;" and he handed me the bill; I looked on that; I says, "$231.00", and at the same time Cunningham was there as I was signing it; I said, "Jack, is this O. K.?" He [732] says, "Yes, the Captain sent me down"; you didn't put that in there.

Q. Did you say this, or not:

"This bill was given to me and Cunningham said that the Captain wanted to have it changed, so I compared the amounts and signed

(Testimony of Robert K. Mookini.)

the second one as a matter of record for the files out there."

A. I said I signed it—I saw the amount $231.00 —and I signed it as a matter of record for the files.

Q. Will you please answer my question: Did you make the statement, that I just read to you, before the Grand Jury, or not?

A. A portion of it.

Q. The last part?

A. Yes, a portion of that.

Q. What portion of it?

A. You read it again and I'll tell you.

Q. Did you say that line commencing right there? (indicating)

A. Yes.

Q. Now, what portion of that line didn't you say—this line here, this last line of the paragraph?

A. "This bill was given to me"—you didn't say "by Roque".

Q. You said "by Roque"?

A. Yes.

Q. In other words, this is correct so far as it goes, but it didn't have the word "Roque" in there?

A. Cunningham told me it was sent in by the Captain to make changes; he handed me that; I says, "Jack, is this O. K.?" and I signed it.

Q. Get yourself away from the Camp; get yourself away from Lee Chong's office; get yourself away from every place [733] except the Grand Jury room, that's all we're talking about: Did you make this last statement that I read you, before the

(Testimony of Robert K. Mookini.)

Grand Jury, with the exception that there is no record here after the words "given to me" of the words "by Roque"?

A. Yes sir.

Q. Weren't you asked this question:

"And did you have anything to do with the changing of these?"

And I'll read your answer so you can get the whole thing:

"No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess Funds."

Q. That question and answer took place in the Grand Jury room?

A. Yes.

Q. The next question:

"Nevertheless you signed this bill as receiving these particular things?"

And you answered, "Yes"?

A. Well, I signed the bill because you showed me my signature on it.

Q. That question was asked, and you made that reply?

A. Yes, when you showed me the bill.

Q. Wasn't this question asked:

"And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?"

(Testimony of Robert K. Mookini.)

And you answered:

"I can't say they were not true and correct. The amounts seemed to be the same; I didn't check it thoroughly." [734]

A. I think I remember that; I told you that I didn't check it, I didn't know about the amounts.

Q. That was the question and answer?

A. That was the answer there.

Q. Wasn't this question asked you:

"You told us that there were a lot of things, paper cups and plates, on this other voucher which could not be charged to the Mess Funds and you informed Mr. Miles of this, and because of that this thing was changed?"

Your answer was:

"Yes. Mr. Cunningham informed me that Captain Miles sent him down to have it changed."

Q. Was that question asked of you?

A. Read it again.

Q. All right.

"You just told us that there was a lot of things, paper cups and plates, on this other voucher which could not be charged to the Mess Fund, and you informed Mr. Miles of this, and because of that this thing was changed?"

You answered:

"Yes. Mr. Cunningham informed me that the Captain sent him down to have it changed."

(Testimony of Robert K. Mookini.)

A. He may have informed me.

Q. Did you make that statement?

A. I may have made that statement, but that was after I had been apprised of the whole thing.

Q. Was that question asked you in the Grand Jury room, and did you make that reply? [735]

A. I think I made that, that he informed me, yes, sir.

Q. Then the next question:

"And when you knew the voucher came out you knew that it had been changed?"

And your answer was "Yes"?

A. Well, I didn't know that until about——

Q. Was that question asked you, and did you make that answer?

A. You didn't complete the question, you just nailed me down to a certain portion, you didn't let me explain a thing.

Q. Were you asked that question?

A. You didn't finish it; you just asked me a certain portion; I was on trial there, Mr. Moore, if you want to know that.

Q. Were you asked that question, or weren't you?

A. I don't remember you asking me that question.

Q. Do you deny answering that question?

A. I don't know; you read it again.

Q. "And when you knew the voucher came you knew that it had been changed?"

(Testimony of Robert K. Mookini.)

And your answer was "Yes"?

A. No, I don't even know when it was changed, and I deny making that statement.

Q. Then, weren't you asked:

"You knew that the items had been changed?"

And your answer was "Yes"?

A. Later, long after that.

Q. Did you make that statement before the Grand Jury, or not?

A. Yes. I tried to explain to you, but you wouldn't even let me go and do it, you cut me short in my answer. [736]

Q. And wasn't this question asked you:

"And you knew there were items put on there which were not actually delivered so as to cover up the amounts of the paper plates and so forth?"

And you answered:

"I knew the paper plates were; the others were changed to vegetables to put the voucher through."

A. That's after September 13th.

Q. Did you make that; was that question asked you, and did you make that reply?

A. I remember making that statement, and I told you that was after September 13th that I found out that the thing had been changed in that form.

Q. And was the question to which you admitted the answer, was that asked you?

(Testimony of Robert K. Mookini.)

A. Yes; the question was short and abrupt, you didn't give me leeway.

Q. Then weren't you asked this:

"You knew that these particular items in toto were not true and correct?"

And you answered:

"Not according to the original bill."

A. I don't remember you ever saying "in toto" or anything like that.

Q. Do you admit or deny making that?

A. I cannot answer that question because I don't know whether that was even asked of me.

Q. In other words, you refuse to either admit or deny the question? [737]

A. Well, because I don't know whether that—because, when you used those words "in toto" of those I don't think you used those words in there; the only thing you did to me "say yes or no", then you shut me up.

Q. Did I tell you to shut up?

A. You told me "that's enough".

Q. I told you "that's enough"?

A. You showed me two bills, and when I tried to explain you wanted "yes" or "no"; I tried to explain, but you said "Yes, or no?"

Q. Who was the foreman of that Grand Jury, do you remember?

A. I don't know.

Q. Weren't you asked this question:

"You knew in fact they were not correct, didn't you?"

(Testimony of Robert K. Mookini.)

And you answered "Yes"?

A. I don't know whether it was incorrect or not; I knew I had paper plates out there for the dinner, and I had flowers.

Q. Was that question asked you?

A. I don't remember, Mr. Moore.

Q. Will you deny that it was made?

A. I can't deny if I don't know.

Mr. MOORE: I think this will be a good time to take a recess, Your Honor.

The COURT: The Court will be at recess for a few minutes only, gentlemen.

(Recess—10:07 to 10:14 a. m.)

The COURT: The Court does not wish to make any suggestion that might in any way affect the rights of either the Government or the defendants, but I do wish to emphasize [738] if there's any way we can shorten it up we'd like to do it.

Mr. ULRICH: I assure Your Honor I'll do everything I can.

The COURT: You will proceed with your cross-examination, Mr. Moore.

Mr. MOORE: Do you remember this question and answer:

"I understand Mr. Gibson was quartermaster?"

Answer:

"Quartermaster, yes."

A. I did.

(Testimony of Robert K. Mookini.)

Q. "But I understand, Mr. Mookini, later on Mr. Gibson's duties were more or less confined just to the regular quartermaster and that you actually took over the duties of Mess Officer?"

Answer:

"Yes, I did."

A. Yes.

Q. "When you first took over the duties of Mess Officer where were you purchasing vegetables, fruits, and so forth?"

Answer:

"At first my duties as Quartermaster were split up whereby I was handling the open market purchases."

A. That's true.

"That would take in vegetables and outside purchases."

A. Camp Equipment.

"Mr. Gibson was handling all subsistence bought from the Quartermaster at Schofield, such as canned goods and whatever the bakery had to sell."

A. Yes.

Q. Now you say, Mr. Mookini, that you never had any charge account with Mr. Leè Chong until September?

(Testimony of Robert K. Mookini.)

A. Around there; my wife informed me of the correct date. [739]

Q. And you have seen this (indicating) Defendants' Exhibit——

A. (interrupting): I seen that book.

Q. Does this refresh your memory as to when this thing started?

A. About September; it's on there, because my wife handled the account.

Q. Your wife handled the account?

A. Sure.

Q. You didn't start buying anything before then?

A. Well, I bought some for cash; my wife and I drove in at Lee Chong's place once, I think, when she wanted some vegetables because the doctor prescribed for her when she was sick; and another time I think the groceries were delivered to my home, for which my wife paid; it was on a Sunday when I was going swimming.

Q. Didn't you tell the Grand Jury that you started buying there during the latter part of July and August?

A. No, I did not; I said there was a delivery made in June 2nd or 3rd, when I was going swimming, when my wife told me she wanted to get some spinach, and she wanted to get some celery; I telephoned Lee Chong if he had any, he said "Yes"; they brought two or three dollars worth of groceries; and she saw me in my bathing suit, I was

(Testimony of Robert K. Mookini.)

getting ready to go swimming, which would be about 9:30 or 10 in the morning.

Q. Wasn't this question asked you before the Grand Jury:

"And how long had you been buying there?"

Answer:

"Latter part of July and August of last year."

A. Well, I have made some cash purchases.

Q. Was that question asked?

A. Yes; I was not sure of the date; I said "around July or August". [740]

Q. Was that question asked you, and did you make that answer before the Grand Jury?

A. Yes, I did; I was not sure of the date.

Q. Was this question asked:

"Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?"

Answer:

"At that time I was buying because my wife was in the hospital."

A. Now let's get this straight, Mr. Moore,——

Q. Did you make that?

A. No, I did not make that. Let's get this straight;——

Q. You deny that?

A. If you put that "after July" I would tell you that would be correct, but not because my wife was in the hospital then.

(Testimony of Robert K. Mookini.)

Q. Was this question and answer given in the Grand Jury room:

"But before—you never bought there before?"

Answer:

"I bought there because I was broke and he offered me the credit."

A. Mr. Moore, I think that statement is pretty well distorted.

Q. Was that question asked, and did you make that answer?

A. In carrying that question out with the answer, I came personally after July; you told me why I bought from Lee Chong's around that time in reference to around July or August or September; I told you "because I was broke"; I was particularly not ashamed to admit I was broke then; that's why my wife wanted to have an open account with Lee Chong's. [741]

Q. Was that question asked you, and did you make that answer?

A. I don't think——

Mr. ULRICH: If the Court please, I haven't, according to the Court's suggestion, interrupted; I haven't made any objection on this line; I have made previous objections; but on this line of cross-examination no human being can sit here and say absolutely "yes" or "no" whether a certain question, word for word as read and propounded to the witness, was put a year or more ago, and whether a

(Testimony of Robert K. Mookini.)

certain answer as put was responded to that question; it isn't humanly possible; I submit to the Court, as a matter of common knowledge within human memory we can't do that sort of thing. The most the witness can fairly be asked is whether in substance he said this, that, or the other thing. And I object to these repeated questions of the witness, coming back time and time again, asking him to do what nobody could do definitely, say "Yes, word for word, those words were asked, and that answer made." I submit the only proper line of cross-examination that can be made is as to the substance and not the definite words. I object to that reading.

The COURT: The objection is overruled.

Mr. ULRICH: Note an exception.

The COURT: Noted.

Mr. MOORE: Will you answer the question, Mr. Mookini?

A. Read it again.

Q. "But before—you never bought goods there before?"

Answer:

"I bought there because I was broke and he offered me the credit."

A. Will you read the question before that?

Q. The one that you deny making: [742]

"Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?"

(Testimony of Robert K. Mookini.)

Answer:

"At that time I was buying because my wife was in the hospital."

A. And when was the one that you had, about July and August?

Q. The very next question is:

"But before—you never bought there before?"

That is referring to before your wife went in the hospital.

Answer:

"I bought there because I was broke and he offered me credit."

A. Mr. Moore, let's get this straight now. There's another question where my answer came out "July and August."

Q. You want that one?

A. Yes, that's the one.

Q. And that's the contention:

"How long had you been buying there?"

Answer:

"Latter part of July and August of last year."

Q. Then the question was:

"Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?"

The COURT: Now, Mr. Mookini, wherever the term "that time" is used it must refer to your state-

(Testimony of Robert K. Mookini.)

ment at the time as to July or August. Is the Court right in that interpretation of the question, Mr. Moore?

Mr. MOORE: "At that time I was buying because my wife was in the hospital."

A. That's referring to July and August?

Q. Yes. [743]

A. Yes; I wanted to make that sure. The way you asked me was "Prior to" July and August.

Q. The question was, "Prior to that time did you buy", and your answer was, not to the effect that it was prior to July and August, but "At that time—" July and August—"I was buying because my wife was in the hospital."

A. I said, "My wife had just come out of the hospital", not "in the hospital"; my wife had come out July 14th, she was there about a month, from June 18th to July 14th.

Q. Did you answer "I bought there because I was broke and he offered me credit"?

A. Just as I told you, you cut me down "Why did I buy there"; I said "Because I was broke"; I even explained to you that I had to pay a lot of hospital bills, doctor bills and nurses, I didn't have enough cash; so my wife asked me to open an account with Lee Chong; I wasn't sure that they would until the account was opened.

Q. When was it your wife was in the hospital?

A. June 18th to July 14th; and she was under Dr. Milnor's care from May 14th or thereabouts to the day she went to the hospital.

(Testimony of Robert K. Mookini.)

Q. Now, Mr. Mookini, is the milk furnished to the Camp out there a part of the Mess?

A. What's that?

Q. The milk, that's part of the Mess, isn't it?

A. You mean fresh milk?

Q. Yes.

A. Yes.

Q. You bought some milk from Yamane's Dairy?

A. You mean, I bought?

Q. Well, the Camp bought some?

A. Yes, the Camp bought. [744]

Q. I understood you to say on direct examination that you bought all your liquor yourself?

A. I explained that to you, too, yes.

Q. And you bought it at the Waikiki Liquor Store, and the Tacoma Brewing Company, is that correct?

A. Yes, sure.

Q. And some Chinese store; where was that?

A. You can buy anywhere around Hotel Street; you can buy from any of those in there.

Q. I thought you said "on the corner" some place?

A. There's the Corner Liquor Store, right at Maunakea and Hotel.

Q. Is that the one you referred to?

A. I bought there; I bought at other places; I bought at Yama Shoten; I bought at a lot of places; the nearest one you can get to, you can get it at.

(Testimony of Robert K. Mookini.)

(Mr. Moore shows document to Mr. Ulrich and Mr. McGhee).

Mr. ULRICH: No objection.

Mr. MOORE: Did you ever get any booze from Pacific Brewing Company?

A. I told you I did.

Q. I thought you said Tacoma Brewing Company?

A. That's the Tacoma; they handle the Tacoma beer there.

Q. That's the same place?

A. Yes, sure.

Q. You receipted for 3 bottles "Four Roses", 2 bottles "Gordon Gin", and one bottle "Bennetts Sloe Gin" on September 1st?

A. Yes, correct.

Q. That's your signature there (indicating)?

A. Yes, that's mine. [745]

Q. How come this is charged to Yamani?

A. Mr. Moore, I explained that to you, I explained that to Deville; I told you how I came to get liquor there, and I even made reference to concerning that I can get stuff at cost price; he offered me through his card that I can get wholesale prices through him if he bought the stuff and I paid for it; he says, "Any time you want any liquor, I have this card where you can buy, instead of paying $4.00 a quart you can get it for $2.00 or $2.50, whatever the price may be." I illustrated the same thing to you about the Consolidated Amusement Com-

(Testimony of Robert K. Mookini.)

pany, I bought a car for $3,100.00 which cost $4,000.00; and I even bought this coat from Liberty House for $2.50 through a friend.

Q. Was this liquor ever paid for?

A. I haven't got the money; I haven't paid for it, around $23.00; I got a bill from the Pacific Brewing Company that was rendered me at my home.

Mr. MOORE: We'll offer this in evidence, may it please the Court.

Mr. ULRICH: No objection.

The COURT: There's no objection to the offer, I understand?

Mr. ULRICH: No objection.

The COURT: It will be admitted.

(Marked—"United States Exhibit M")

(Testimony of Robert K. Mookini.)

Crim. #8518
U. S. EXHIBIT "M"
Admitted

Cable Address
"PACBREW"

Invoice No.
3100

Telephones
4090
5202

PACIFIC BREWING CO., LTD.
Office: 154 North Hotel Street
P. O. Box 1296—Honolulu, Hawaii

Date 9/1/34

Sold to Yamami
Address Terr. Creamery
Ship to Sold By

Terms:
Your Order No.
Our Order No.

Quantity		Description		Unit Price	Amount
3	only	Four Roses	12/32	2.90	8.70
2	"	Gordon Gin	12/5	3.	6.00
1	"	Bennetts Sloe Gin	12/5	1.45	1.45
					16.15

R. Mookini
C C C

[109]

Mr. MOORE: You knew a Mrs. Lee who used to take laundry out at the Camp?

A. I think so.

Q. And you had something to do with the laundry, did you?

A. I looked after the laundry when it was brought back.

Q. And didn't you even go out and "mooch" a little okolehao off her—didn't you? [746]

(Testimony of Robert K. Mookini.)

A. No, I did not.

Mr. ULRICH: What do you mean "mooch"?

Mr. MOORE: Don't pay for it.

Mr. ULRICH: Why don't you say "go out and took it away from her", then?

Mr. MOORE: You know Doctor Enright, don't you?

A. Sure I do.

Q. You went out there one time with him and got a gallon and didn't pay for it?

Mr. ULRICH: Your Honor, I object——

A. I don't know whether I got gallon. In fact, if you want to know, everyone of them were getting liquor around there.

The COURT: Mr. Mookini, wait until your attorney makes the objection.

Mr. ULRICH: I object; it's utterly irrelevant, incompetent, and not proper cross-examination how many places he may have gotten liquor from, how much he may have paid for it, or whether he paid for it all or not.

Mr. MOORE: I'll take the Court's ruling.

The COURT: Do you want to be heard on the objection, Mr. Moore?

Mr. MOORE: No, Your Honor.

The COURT: The objection is sustained.

Mr. MOORE: You used to borrow money from Lee Chong, didn't you, while you were at the Camp?

A. I don't know whether I did borrow; maybe I asked him for a couple of dollars when Colman

(Testimony of Robert K. Mookini.)

was with me and we wanted to go to lunch, when I didn't have the money—I was short; I told him, "Let me have a couple of dollars, and I'll pay [747] you back." That's natural, if I meet a friend in town and he had money and I was broke, I would ask him to lend me a couple of dollars.

Q. Did you ever borrow as much as $10.00?

A. No, I don't think so.

Q. Just when did this investigation of this case start, if you recall?

A. Around September 13th.

Q. And from then on out, until Miles, Cunningham, and yourself were out, the investigation continued?

A. It started around the 13th, I think that was when Mr. Lloyd—well, it was before then, it was the first part of September, the first that I knew it was around the 13th, then the matter of the vouchers was brought up, then the Canteen account was gone into, then it developed that the Canteen account was short of some money, and into the account some money was transferred from the Camp Director's Fund.

Q. What I am asking you is this; when it started, and when it stopped; we're not asking as to why.

A. I don't know when it stopped; all I know, I got a telephone call on the 29th of September that "in addition to your recreational duties you are assigned to duty as quartermaster"; October 1st I took over the quartermaster duties; I don't know whether the investigation had started, or anything, but I

(Testimony of Robert K. Mookini.)

do remember being suspended after Deville came out there.

Q. And you finally resigned?

A. Well, I saw Deville a lot of times; he tried to scare me on the street; he told me I was in "hot water" and I [748] better confess about doing this; I said, "Mr. Deville, why don't you get this thing straightened out?" I offered to help him, in front of Mr. McGhee; he refused me; in fact, he didn't know about the Lee laundry—I told him about it.

Q. Did you resign, or didn't you?

A. I don't know whether I resigned; there was communications going back and forth, trying to get my pay back; they wouldn't tell me what I was suspended for; I take it for granted I am the "goat".

Q. It's like this military court—you don't know what it's all about?

A. I left it to the council.

Q. Mr. Mookini, showing you United States Exhibit "L"; do you know what that is?

A. Council Book.

Q. You know what that is?

A. Yes.

Q. Are any of the entries there in your handwriting, Mr. Mookini?

A. Yes; after the vouchers are all paid Miles tells me to fix it up.

Q. With the exception of the one which is signed by Major Mahaffy, referring to the account for the month of March——

A. Yes.

(Testimony of Robert K. Mookini.)

Q. Then from there on out, as far as this book goes, you made the entries?

A. Yes. Some Miles made.

Q. Some in here that Miles made?

A. Yes.

Q. Where are those?

A. Here (indicating).

Q. That's the month of September?

A. Yes. [749]

Q. But this, as I understand, this is the Council Book that is kept in the usual course of business out there, which sets forth the various amounts received and the amounts paid out and more or less what they are for?

A. Statements, yes—monthly statements.

Q. It isn't a daily account, but it's for the entire month?

A. Yes.

Q. And this, as I understand it, Mookini, is complete except for the month of September, which is incomplete?

A. Yes.

Q. Referring to the Council Book; that is, the accounts in the Council Book are complete for the months of March to August, inclusive, but are not complete for the month of September?

A. Yes.

Q. These months being in 1934.

A. Yes.

(Testimony of Robert K. Mookini.)

Q. In this investigation, Mr. Mookini, Miles first made charges against you, and then you made charges against Miles?

A. No, I did not make charges against Miles until we was confronted in the office about October 9th; Miles had it all his way all the way through.

Q. In other words, you didn't do anything about it until October 9th?

A. Around about that time I happened to come in, if my memory serves me right, come in to the Clinic; I had a severe cold, around the 9th; I came to the office to report to Mr. Lloyd I wanted two days sick leave; then and there Mr. Lloyd told me, "Bob, what's all this about? Here's Miles wants you to be discharged." I says, "What's [750] the reason?" He says, "I don't know; let's get Miles in." I says, "Yes; he's outside." So he took Miles and I in; then and there Lloyd tried to get me to tell him why Miles was against me. He said to Miles, "I thought you said Bob was a good worker out there and he was a handy man." Then I talked to Miles, and Miles got sarcastic. I said, "Captain, I didn't know you had made all these charges until ten minutes ago, that you are the one that had started all this rumpus against me; I am giving you a chance to clean your shirttail." And next morning I brought out the fact that there was money missing out at the Camp, that he had gone out and borrowed it for his stock and took out a voucher and changed the number on it; it was in the morning about 10 o'clock Mr. Lloyd says, "Call up Miles and

(Testimony of Robert K. Mookini.)

ask him for his resignation." Then he sent me out there that night and told me to take temporary charge of the Camp.

Q. But after that time you were more or less smeared, we might say?

A. No; I played the game clean all the way through, Mr. Moore, I never played it dirty, and I played it right up to the time when the inquiry was finally started; I never breathed anything that I might hold anything against anybody; but he didn't see fit to play the game clean.

Q. Up to September 1st you were very friendly with Miles, weren't you?

A. Well, I was always friendly with anyone; I don't care how much dirt they do to me, I am friendly with anyone until it gets too bad. [751]

Q. Are you friendly with him now?

A. He doesn't want to talk to me; he sees me but he doesn't talk to me. Cunningham talks to me, he says "hello" a[redacted]y "hello" to him. I have no grudge agains[redacted]one.

Q. At this time you have no grudge against Miles at all?

A. No, I haven't any grudge against nobody; but when a man gets up and tries to "hook" me, gosh, you would turn, yourself.

Mr. MOORE: That's all.

The COURT: Before the re-direct, the Court would like to ask the witness a question.

Q. Mr. Mookini, several times in your testimony you've referred to "Mess Fund", and at least one

(Testimony of Robert K. Mookini.)

time, when you were talking about the money that Gabrielson turned over to Captain Miles in connection with that Junior Police picnic you referred to "Camp Director's Fund"?

A. Your Honor, the fund out there is not marked "Mess Fund"; it's marked in the account as "Camp Director's Fund".

Q. It has frequently been referred to as "Mess Fund" in this case.

A. Yes, sir.

Q. That's the same fund you referred to as "Camp Director's Fund"?

A. Yes sir, that is the nomenclature for it.

Q. "Camp Directors Fund" is the way it appears officially?

A. Yes sir.

Q. Some witnesses used the term "Mess Fund".

A. It's identically the same thing. [752]

Q. And when you used the term "Mess Fund" you mean the same thing?

A. I mean the Camp Director's Fund.

The COURT: Proceed.

Mr. ULRICH: Not wanting to seem insistent, Your Honor, at this time I just like to make the record sure on the point that I have been making by at this time moving for leave to inspect the transcript of the record of the Grand Jury, on the ground it is utterly impossible on re-direct to examine this witness as to material points on which he has been examined on cross-examination without that privilege. I'll take Your Honor's ruling.

(Testimony of Robert K. Mookini.)

Mr. MOORE: May it please the Court, as far as I'm concerned, if he wants to see a copy of it—I can't let you have this copy because I have made some notes on it, but I may have a copy.

The COURT: Yes; the Court would suggest, as a matter of courtesy, if you have an extra copy that you present it to counsel.

Mr. MOORE: Well, Mr. Ulrich, I'll turn over to you for your inspection the original transcription of the notes, and ask—I have made some notations on there, which you'll probably see—but I'd like to have that back because it is the original transcription; all I have is one copy.

The COURT: It's the original of which you're using a carbon copy?

Mr. MOORE: Yes, Your Honor, it is. If there's any question about that, we can compare them.

Mr. ULRICH: I'll ask this privilege, if Your Honor please, to proceed with the examination of the witness along [753] other lines, and then be given some opportunity to read this, with the opportunity to re-direct on that.

The COURT: If you have enough to fill in the morning, I would see no objection to recalling this witness at a later time.

Mr. ULRICH: Yes. I don't want to delay the matter at ths time, but I would like the opportunity of continuing the re-direct on this one phase of the matter before we close.

(Testimony of Robert K. Mookini.)

Re-Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Mookini, Mr. Moore on his cross-examination of you has questioned you as to charges and counter-charges which were made as between yourself and Mr. Miles. You said something, but I'm not sure that it is clear in the record, as to just what the nature of the charges that you made against Mr. Miles were. Will you state that a little more difinitely?

A. I was at Lloyd's office at the time when Miles was given the opportunity to face me to state facts why I was supposed to be discharged. Then he hedged; he didn't want to commit himself; he said nothing. Pretty soon he got into an argument that he couldn't get along. I asked him why. He wouldn't say why. So I asked Mr. Lloyd, I says, "Mr. Lloyd, what's all this about?" He says, "Well Bob, Miles has come in here and has made statements that you were not carrying out the duties of the Camp as he saw fit, and he says that there was something wrong with the Mess out there." I says, "Well, Mr. Lloyd, if there's anything wrong I think I should give Mr. Miles the opportunity [754] of turning his resignation in rather than turning him in; I am willing to give him that opportunity of clearing himself." So he told me, "What the hell, you think you're the Governor?" I said, "No, ——"

Q. Who said that?

(Testimony of Robert K. Mookini.)

A. Miles. I said, "No, but I am still playing the game clean." So he challenged me to it; and then and there I produced next morning a promissory note signed by Miles July 16th, produced the Council Book, which was already in Lloyd's office during the investigation, showing where he had certified to a certificate back there of having the money in the bank, produced the voucher there where it was changed with Miles signature on it; Miles took a voucher which was made out to the Camp originally, and he had replaced it on a voucher of July 17th with $205.64, which represented an amount that was owing to the Camp by the Junior Police office for a picnic held June 9th. I told Mr. Lloyd, "Here it is; you check it." They called up the Police Department, and they were shown, Mr. Lloyd and Mr. Matson were shown a voucher showing that Mr. Miles had signed as having received the money on June 21st. And he also showed him the check book there, two entries there where he scratched it and put it back July 17th; and the note showed—which is in Mr. Lloyd's possession, I think, now, or Mr. Moore —that the money was borrowed July 16th, 8 o'clock at night, through my investigation of that particular account. Then and there Mr. Lloyd asked him, "What about this $457.00 and this $19.00 or $21.68?" They did not appear in the Canteen account but was taken out of the Camp Director's Fund. And then Colman and Miles was asked [755] to resign because it did not show what disposition they had

(Testimony of Robert K. Mookini.)

made of the money that was transferred from the Canteen account, and Miles was, particularly, on this money that was not at the Camp.

Q. And the net result of the investigation at that time was that Miles was given an opportunity to resign?

A. To resign; and I was sent out there the day Miles was given the opportunity to resign; I was called by Mr. Lloyd, and I appeared before him; he said, "Bob, go out and take charge of the Camp tonight, as Acting Camp Director, because Miles out there has been given a chance to resign."

Q. And you continued along there until Mr. Deville got along with this investigation?

A. Yes.

Q. And then this order came that there was to be a suspension of you pending the investigation?

A. That came the day that Mr. Deville was out at the Camp.

Q. And then there was the specific order suspending you?

A. Yes.

Q. And that's all you've heard, is that right?

A. Yes.

Q. Were you ever furnished with any charges when you were suspended, or anything like that?

A. When the suspension was handed me in Mr. Lloyd's office it didn't say; it just says "suspended"; no charges.

Q. That's what I mean. The investigation was started, and pending the investigation you were suspended, and you are still suspended?

(Testimony of Robert K. Mookini.)

A. I consider myself discharged now.

Q. Nothing else has happened?

A. No. [756]

Q. There has been no order since then discharging you, except this one suspension, is that right?

A. Yes, with the exception that in January or February the suspension was made effective, and I think October 18th or 17th—I'm not sure—but so far no discharge; maybe I have been discharged for cause; I don't know.

Q. Well, you were suspended, and the suspension was made effective at a later time; I don't quite understand?

A. No. I got a letter from the Department of the Interior making my suspension effective the date the suspension had occurred here; it was around October 18th, because at that time—there were no charges—I made demand for back salary, so they beat me to it and made it effective October 17th.

Q. In other words, the idea is that the investigation started and the suspension order was made and nothing was done until you asked for salary and then official notice of the suspension came through, dating it back to the original date?

A. Yes sir.

Q. And that's all that happened?

A. That's all.

Q. No resignation, discharge, or charges; anything of that kind?

A. No.

(Testimony of Robert K. Mookini.)

Q. (after showing document to Mr. Moore): I show you—this is the notice——

Mr. MOORE: What are those—stenographic notes, Mr. Ulrich?

Mr. McGHEE: They are my notes.

Mr. ULRICH: I show you a letter, on the stationery of the United States Department of the Interior, signed by a [757] man named Burlew, administrative assistant, directod to your attorney, advising you of the suspension; have you seen that before?

A. Yes sir.

Mr. ULRICH: I offer this just as explanatory of the witness' testimony. Any objection, Mr. Moore?

Mr. MOORE: No, I have no objection.

The COURT: It will be admitted; mark it, Mr. Clerk.

(Marked "Defendants' Exhibit 5")

Mr. ULRICH: May I just very briefly give this to the jury?

(Testimony of Robert K. Mookini.)

Crim. #8518.

DEFTS' EXHIBIT #5.

Admitted.

United States
Department of the Interior
Office of the Secretary
Washington.

January 17, 1935.

Earl R. McGhee, Esquire,
Arcade Building,
Honolulu, Hawaii.

My dear Mr. McGhee:

Your letter of December 14 addressed to the Director of the Emergency Conservation Work relative to the claim of Mr. Robert K. Mookini for his salary from October 16 to November 19, 1934, has been referred to me for acknowledgment and reply.

The records of this office show that Mr. Mookini was suspended from his position as a recreational officer at the Wahiawa camp by the Governor of Hawaii on October 17, at the request of the local disbursing officer. This suspension was confirmed by the Secretary of the Interior on January 9, 1935.

Under the regulations of this Department and in accordance with the decisions of the Comptroller General of the United States, Mr. Mookini is not entitled to pay during the period of his suspension.

(Testimony of Robert K. Mookini.)

Mr. Mookini was advised of this action under date of January 9, 1935.

Sincerely yours,

(s) E. K. BURLEW,

Administrative Assistant. [121]

Q. That's the last about what you've heard about what your status may be?

A. I think that is all; I'm not sure; it's so long after that.

Mr. ULRICH: Reserving the right to recall the witness for further questioning after examination of the record of the Grand Jury transcript. [758]

The COURT: Before the witness leaves the stand, Mr. Ulrich; there's one statement I'd like to call your attention to. A few moments ago, when he was being questioned about what occurred in the Grand Jury room, the attorney was inquiring as to matters that occurred several years ago. Do you know when this matter was before the Grand Jury?

Mr. MOORE: The indictment shown on the return, Your Honor, it's a matter of record in this Court when this indictment was returned.

Mr. ULRICH: Nothing in the case goes back further than last year, so far as I know, back to 1934.

The COURT: But the last time you were commenting on your exception you referred to several years ago.

Mr. ULRICH: That must have been inadvertent——

(Testimony of Robert K. Mookini.)

Mr. MOORE: The Grand Jury made the return of this indictment on the 19th day of March, 1935.

Mr. ULRICH: 1935, yes.

The COURT: Mr. Mookini, do you know when you were before the Grand Jury?

A. Yes sir.

Q. When?

A. That's the date.

Q. How many times were you before the Grand Jury?

A. That's the first time I ever appeared before the Grand Jury.

Q. You appeared before this Grand Jury only once, didn't you?

A. Yes sir.

Mr. ULRICH: I don't know what Your Honor has in mind; I was referring to a different time, before the time the witness was testifying, when all these matters were within his [759] knowledge, a prior time when things were happening, many months before, and I may have said "years".

Mr. MOORE: I think what His Honor is thinking about is this; that the Grand Jury at the time this was presented had two sessions, there was one session on a Friday and, as I recall the testimony, shortly before the 15th of March, and because somebody didn't have their income tax we didn't go on in the afternoon so that they could get their income tax in, and then it went over until the following Monday, to about Monday noon, I believe it was

(Testimony of Robert K. Mookini.)

the 19th, in this July term; so that there were two sessions; and I believe, if I am correct, Mr. Mookini, you appeared the first day, did you not?

A. No, it was the same day, because——

Mr. MOORE: The Grand Jury held two sessions on the thing; do you recall whether or not it was on a Friday or a Monday?

A. When was the 19th?

Mr. MOORE: Well, all right.

A. You should have known that, because I came from the Grand Jury and was making a report when I came down; that's the day Deville was out here and he told me he "got the goods" on Miles.

Q. Any more bright remarks?

A. No, I am just telling you that Deville can furnish that.

The COURT: The Court believes that fixes the time near enough. However, if it is desired to have it more exact, it can easily be furnished at a later time.

Mr. ULRICH: It's 11 o'clock; I have a few short witnesses I can put on one after another. [76]

Mr. MOORE: Let's recess, then we can put on three or four witnesses, Your Honor.

The COURT: We'll have a very short recess, then we'll continue until about 11:30 or perhaps a little later.

(Recess 11:01 to 11:07 a. m.)

Mr. ULRICH: Call Mr. Glowenlee.

JOSEPH P. GLOWENLEE

being duly sworn as a witness for the Defendants, testified as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Will you state your name, please?

A. Joseph P. Glowenlee.

Q. Mr. Glowenlee, what is your business connection here in Honolulu?

A. I am a salesman, selling only to the Federal Government through the Quartermaster officers and to the organizations such as companies and batteries. However, I include some other branches of the Federal Government.

Q. Salesman for what concern?

A. The Hurd-Pohlmann Company.

Q. In what line of business is the Hurd-Pohlmann Company engaged, in Honolulu?

A. They sell specialty equipment and machinery.

Q. Your work has been principally with the various military units and Government camps?

A. Yes, exclusively.

Q. During the year 1934 did you have occasion to sell any goods to or have any dealings with the Civilian Conservation Corps Camp at Schofield Barracks? [761]

A. Yes, that was included in my territory.

Q. Whom did you transact your business with at the C. C. C. Camp?

A. Well, I usually transacted all of my business through the main office in Honolulu, and all orders

(Testimony of Joseph P. Glowenlee.)

had to be covered by a purchase order signed by Mr. Lloyd. However, I did have the privilege of leaving some descriptive literature at the Camp in Schofield covering such items which would be serviceable and beneficial to the organization.

Q. Did you ever meet a man named Cunningham in connection with your contacts with the Camp?

A. Yes. I called on Mr. Cunningham quite frequently, because at that time he was the steward in the kitchen and I understand it was up to him to recommend the purchase of certain types of equipment.

Q. Did you have occasion to recall any particular items of equipment that were sold by you to the Civilian Conservation Corps Camp?

A. In the kitchen we sold butcher supplies such as knives, and an electric slicing machine.

Q. An electric slicing machine?

A. Yes sir.

Q. Do you recall having any conversation with Mr. Cunningham at any time relative to any remuneration which he might have received or wanted to receive for recommending the purchase of your goods, or something of that sort?

A. Just about the time when the Conservation Corps was in need of considerable equipment I complained to Mr. Miles, at that time the Camp Director, that it was become quite difficult to sell equipment because the transactions [762] appar-

(Testimony of Joseph P. Glowenlee.)

ently were not as they *should, that* I was being approached for cuts and commissions, which was a practice that I absolutely did not indulge in nor was it tolerated by our firm. A few days later, in making another call at the kitchen, Mr. Cunningham give me quite a verbal "working over", insisting that I was trying to put him in a questionable position, and he admitted at that time having received $5.00 from a member of our firm; he didn't say that it was a rebate on sales, but he stated that this member had given him this $5.00 to buy some cigars with. But there was still another item sold just a few days previously, amounting to $185.00, and Mr. Cunningham told me that he was going to get $18.50 from that sale or know the reason why. My answer to Mr. Cunningham was that I had no authority, or I wouldn't if I did have it, to play any part in such transactions, that he would have to take that up with the president of our firm.

Q. That conversation took place where?

A. At Schofield Barracks, in front of the E. C. W. kitchen.

Q. Do you recall whether that $5.00 was spoken of in connection with any particular sale such as knives, or anything like that?

A. I do not recall whether or not the statement was made that that was a 10% commission on that sale. However, the sale that was made at that time, by someone else, not by me personally, did amount to approximately $50.00.

Mr. ULRICH: That's all.

(Testimony of Joseph P. Glowenlee.)

Cross-Examination

By WILLSON C. MOORE, Esq.

Q. Have you ever talked with Mr. Deville during this investigation? [763]

A. Yes; shortly after I spoke to Mr. Miles, Mr. Deville called on me in the office.

Q. And you told him about this $5.00 transaction, didn't you?

A. Well, by that time Mr. Cunningham—he had told me previously—up to the time that Mr. Cunningham told me, I knew nothing of it.

Q. Well, didn't Mr. Cunningham tell you before Mr. Deville went to see you about this $18.50.

A. Yes.

Q. You didn't say anything to Mr. Deville about this $18.50?

A. No; I wasn't asked; no one came to see me at any time after that regarding the $18.50.

Q. Well, didn't you tell Mr. Deville about this $5.00 transaction?

A. Yes.

Q. And you've learned about this $5.00 transaction the same time you sold this meat cutter, didn't you?

A. Yes.

Q. And when you told Mr. Deville about this $5.00 you also knew about the $18.50, didn't you?

A. No sir.

Q. How didn't you?

A. Because there were a few days separated in between. Mr. Deville came to call on our office

(Testimony of Joseph P. Glowenlee.)

shortly after Cunningham had spoken to me as having received $5.00 and that he was going to get $18.50; but the $5.00 question was the only one that was brought up; the $18.50 statement was not made by me that I can recall to Mr. Deville.

Q. Let's see if I got this straight. You were out to the [764] Conservation Camp, and Mr. Cunningham said that he got $5.00 from a man in your concern for cigars, is that right?

A. Yes.

Q. That was Mr. Beyer?

A. I don't know exactly.

Q. You had a Mr. Beyer there?

A. Yes.

Q. Then after that, you say, Deville came to see you?

A. We're a little bit mixed up on that. Before this all took place I complained to Mr. Miles personally that I was being approached for rebates on sales made to the C. C. C. Camp by individuals who tried to give me the impression that they were influential in throwing orders our way; and shortly after I spoke to Mr. Miles on this matter Mr. Deville came to see me; but after Mr. Deville had seen me the first time Mr. Cunningham stopped me at Schofield and told me about it, and I mentioned the $5.00 fact to Mr. Deville the second time he called on me, but did not mention the $18.50.

Q. But you knew about the $18.50?

A. Yes.

(Testimony of Joseph P. Glowenlee.)

Q. Why didn't you mention that, too; he came up to see you, didn't he, to find out whether men were asking for a cut?

A. I answered Mr. Deville's questions as truthfully as I could regarding the individual.

Q. Wasn't the purpose of Mr. Deville's visit up there, wasn't that to find out if anybody was getting or demanding cuts?

A. Yes, and at that time I tried to give and I gave the absolute truthful statements regarding certain questions that were asked.

Q. And you never said a thing about this $18.50?

A. I do not recall whether I did or not. [765]

Q. Isn't it true, Mr. Glowenlee, that the first time that Mr. Deville went to your place you told him that you didn't know anything about anybody demanding cuts?

A. Yes.

Q. And you had seen Captain Miles before then?

A. Mr. Deville asked me if I had been approached outright or, I believe, had paid out any money; I said I had not; and the individual that came to me and asked me for cuts in making Federal purchases was so ridiculous that I ignored the whole situation; I thought it was silly.

Q. Didn't you tell Mr. Deville on the first occasion that you didn't know anything about such things, that you never heard of any of them?

A. I don't believe I made that broad statement.

(Testimony of Joseph P. Glowenlee.)

Q. And on the second occasion you did not say anything about this $18.50?

A. No, I don't remember whether I did or not.

Q. You didn't have any lapse of memory, did you?

A. Well, my work keeps me very busy, and my territory is quite large.

Q. You're the man that they found out by a tree in Thomas Square that had lost his mind, aren't you?

A. Well, it seems to me that I have a small carryover of a wartime affliction.

Q. Do you know what actually did take place out there?

Mr. ULRICH: Just a moment, if Your Honor please. I submit there's absolutely no occasion for this line of cross-examination at all. This witness has come here and is testifying perfectly truthfully to the best of his ability; [766] if he had a difficulty during the War or since, of that kind, it ill behooves counsel at this time to make it part of his cross-examination and suggesting that he doesn't know anything about what he's given definite evidence concerning. He can ask him as to what he remembers and what was there, but in such a line as this it's utterly out of place, and I suggest it's improper cross-examination.

The COURT: Mr. Witness, if you have any affliction that affects you mentally, you may tell the jury about it.

(Testimony of Joseph P. Glowenlee.)

A. Well, it seems that during the War and for some time after I had a severe attack of influenza; I did have somewhat of a heart condition that at the time caused an extremely high blood pressure and brought on a high state of nervousness, but in fact for some periods, while I was physically able to move about, I was considered mentally out due to that condition. However, I thought that that had been fully healed or had been fully and successfully treated, and it was quite evident that I did have a recurrence of it some several years ago.

Mr. MOORE: You knew, Mr. Glowenlee, did you not, that when Mr. Deville came up to see you on both of those occasions he was endeavoring to ascertain what you knew about members, particularly in the Civilian Conservation Corps, asking for cuts, didn't you?

A. Well, I wouldn't say that I knew that Mr. Deville at that time was the investigator from the office; I knew that he was connected to some extent, but just exactly what his work was I wouldn't be able to say that I knew that absolutely scientifically.

Q. Didn't he tell you that he was a member of the [767] United States Secret Service?

A. Well, that wouldn't make a man an investigator, would it?

Q. I'd like to know what it would be, then; it certainly wouldn't make him anything else. And you never told him about this $18.50?

(Testimony of Joseph P. Glowenlee.)

A. Not that I recall.

Mr. MOORE: That's all.

Re-direct Examination.

By BARRY S. ULRICH, Esq.

Q. The last occurrence that you had of this wartime affliction was several years ago, wasn't it?

A. Beg pardon?

Q. The last occurrence that you had of this wartime affliction was several years ago, wasn't it?

A. Yes sir; since then on medical examination it has been found that the condition is entirely corrected.

Q. You didn't make any memorandum of your conversations with Mr. Deville, did you?

A. No sir; I didn't think it necessary.

Q. You didn't know what use he expected to make of his conversations with you?

A. No sir.

Mr. ULRICH: That's all.

The COURT: You have been able to carry on your usual business for some time, have you?

A. Yes sir; I have been employed steadily by my present firm for 4½ years, and the only time that I have lost through illness was, I believe, 8 days or possibly less, during the recurrence of this condition. [768]

Mr. ULRICH: That's all.

The COURT: Anything further, Mr. Moore?

Mr. MOORE: Nothing further.

The COURT: You're excused, Mr. Glowenlee.

LOUIS HUTCHINSON

was duly called and sworn as a witness for the Defendants, and testified as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. What is your name?

A. Louis Hutchinson.

Q. How old are you?

A. 22.

Q. Do you know Mr. Lee Chong?

A. Yes, I do.

Q. And the Lee Chong Company?

A. Yes, I do.

Q. Did you work for that Company for a time?

A. Yes.

Q. When did you work for the Lee Chong Company?

A. I can't remember the exact date.

Q. I don't care about the exact date; was it last year, or during what general period?

A. During 1934.

Q. What kind of work did you do for Lee Chong Company?

A. I was a truck driver.

Q. And do you remember Mothers' Day of last year, that is, of 1934, do you remember that time?

A. Yes.

Q. Do you remember delivering a load of goods to the C. C. C. Camp together with Mr. Lee Chong about the day before Mothers' Day last year?

A. I do. [769]

(Testimony of Louis Hutchinson.)

Q. Who went along on that load with you?

A. I think it was just myself and Lee Chong.

Q. Did you help in loading the load before it went out to the Camp?

A. Yes.

Q. And did you help to unload the load when it was out there?

A. Yes sir.

Q. When you got out to the Camp that day, as nearly as you can recall, who was there?

A. I seen Mr. Miles and Mr. Cunningham, and there were other boys around there, some C. C. C. boys.

Q. Will you describe how you unloaded that load; who did the lifting out of the truck or wagon?

A. I always get in back of the truck and unload it myself to the boys; Mr. Cunningham stand by with the bill and he checked everything what I called off from the truck.

Q. On that occasion, as you would hand things out would you indicate what they were so that he could check them off?

A. Yes sir.

Q. So that, you helped personally to lift everything off of that wagon?

A. Yes.

Q. And it was taken by some of the boys there and put down?

A. Yes sir.

Q. Now I'll ask you, as you lifted those things off there, whether you lifted off or whether there

(Testimony of Louis Hutchinson.)

was taken off that truck that morning any liquor?

A. No sir.

Q. I'll ask you whether, to the best of your recollection [770] and knowledge, there was any package or packages on that load marked with the name of Mr. Mookini?

A. I don't recall any package marked by the name of Mookini.

Q. Do you know Mr. Mookini, or did you know him—the gentleman here (indicating)?

A. Yes.

Q. I'll ask you this: while you were unloading the goods out there that day, to the best of your recollection did Mr. Lee Chong himself lift any package out of that truck and carry it anywhere?

A. I did not see him lift any packages, because I myself carried the packages from the truck to the boys.

Q. Well, did Mr. Lee Chong carry any package around, so far as you know, that morning?

A. Not that I know of.

Q. Did you see Mr. Lee Chong lift a package, a box about so long (indicating on desk), and so thick (indicating), and so high (indicating), off the truck and carry it over to Mr. Cunningham's and talk to Mr. Cunningham about it, or anything like that?

A. I did not see it.

Q. Well, when you were loading the goods on to the truck down at the store, did you put any liquor on the truck?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. As a matter of fact, all the time that you worked for Mr. Lee Chong did you ever deliver any liquor for him anywhere?

A. No sir.

Mr. ULRICH: I think that's all. [771]

Cross-Examination

By WILLSON C. MOORE, Esq.

Q. Where are you employed—where do you work?

A. Down at the Territorial Hospital.

Q. That's over in Kaneohe?

A. Yes sir.

Q. When did you start working there?

A. September 1st, 1934.

Q. 1934—last year?

A. Last year.

Q. Do you know a man by the name of McGregor?

A. I do.

Q. And while you were working at Lee Chong's he used to stop in at the store quite often, didn't he?

A. Yes, I recall him stopping there several times.

Q. And he's some relation of yours, isn't he?

A. Yes sir.

Q. What relation is he?

A. He's my uncle.

Q. Have you ever talked to Mr. McGregor about this case—your uncle, I mean?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. Never talked to him once?

A. No sir.

Q. Ever talk to Mr. Lee Chong about it?

A. No sir, because I stayed down at Kaneohe altogether, down at the quarters.

Q. Did you ever talk to Mr. Mookini about it?

A. No sir.

Q. Never talked to Mr. Mookini about it?

A. No sir.

Q. Ever talk to Mr. Ulrich about it?

A. Just this morning when he called me in at his office. [772]

Q. You talked to Mr. Ulrich in his office this morning?

A. Yes sir.

Q. Ever talk to Mr. Deville, this man here (indicating) about it?

A. Yes.

Q. And do you remember where the first conversation was with Mr. Deville?

A. Yes.

Q. And where was that?

A. Down at the Armory.

Q. At the Armory?

A. No; down at the Territorial Hospital.

Q. Where you work. You're a guard or something over there, are you not?

A. Yes sir.

Q. And, he had a Filipino man by the name of Rivera, did he not?

A. Who had?

(Testimony of Louis Hutchinson.)

Q. Mr. Deville; wasn't there a man with Mr. Deville?

A. At that time, no.

Q. There wasn't any, over at the Territorial Hospital?

A. No sir.

Q. Just you and Mr. Deville?

A. Mr. Deville.

Q. Now, do you remember telling Mr. Deville over there at Kaneohe that on that Mothers' Day load there was a box——

Mr. ULRICH: Might have been a dozen or more.

Mr. MOORE: Well, wait until I finish the question:—with Mookini's name on it?

A. I don't recall, sir.

Q. Well, would you deny that you told Mr. Deville that? [773]

A. I deny.

Q. Now then, the next day you came over and made a statement at the Armory, didn't you?

A. Yes sir.

Q. To Mr. Deville?

A. Yes sir.

Q. Between the time you saw Mr. Deville at Kaneohe and the time you saw Mr. Deville at the Armory, did you talk to any of these men or your uncle Mr. McGregor?

A. No sir.

Q. Never said a word to any of them?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. Who employed you down there at this place; who gave you the job?

A. Down at the Territorial Hospital?

Q. No; down at this store?

A. Mr.—I forgot his Chinese name—Chun Yau Chee.

Q. He's the man that gave you the job?

A. Yes sir.

Q. Now, this truck that you take out and deliver these goods on, is that an open truck, or a closed truck?

A. It's all open, but it has sides; but it's all open.

Q. In other words, it's got a roof on top, but there's no sides; don't it open on the sides?

A. There's no roof on top of the truck, only where I am driving.

Q. Just a roof over the driver's seat?

A. Yes sir.

Q. And while you were unloading this truck where was Mr. Lee Chong?

A. I don't know, because I was busy unloading the truck.

Q. Is it possible that in all your business in unloading this truck that Mr. Lee Chong may have taken a box out of that truck? [774]

A. Well, he might have, I don't know.

Q. In other words, you don't know whether he took one off, or not?

A. Not from the back of the truck, because I was there at all times.

(Testimony of Louis Hutchinson.)

Q. But you do know that he didn't take one off the hind end, is that it?

A. Yes sir.

Q. But this truck—you can reach over the sides, can't you?

A. No, you can't.

Q. What kind of a truck is it?

A. It's a Packard truck; it's built very high.

Q. Built very high?

A. Yes sir.

Q. Can you stand on the running board and reach in the back end?

A. You still have a hard time of reaching in.

Q. How high are the sides?

A. Well, I would say about 10 feet from the ground, I think it is, if I'm not mistaken.

Q. The sides of this truck run up 10 feet high?

A. Between 9 and 10, I think it is.

Q. Higher than that door there (indicating door to Judge's chambers)?

A. If I'm not mistaken, about the door.

Q. About the top of the door?

A. Yes sir.

Q. The sides run away up to there?

A. Yes sir.

Q. And there's no roof over it?

A. No roof over it.

Q. And you were at the back end taking things out?

A. Yes sir. [775]

(Testimony of Louis Hutchinson.)

Q. And there was nobody else in the back end while you unloaded?

A. Nobody else.

Q. A lot of these goods, were they boxed up?

A. Some of them were sealed up, but we always know what's in it.

Q. Some of them were sealed up—withdraw the question. When you were unloading, your idea was to get that truck unloaded and get through, wasn't it?

A. Well, I had to call out what I put out, so Mr. Cunningham can check it on the bill.

Q. Mr. Cunningham was there checking it?

A. Yes sir.

Q. And as you called these off Mr. Cunningham would stand right at the back of the truck, and some of the boys that work at the Camp would receive these?

A. Yes sir.

Q. And Mr. Cunningham would check them off?

A. Yes sir.

Q. Then they took them on in, and then you would hand them the next package?

A. Yes sir.

Q. And you don't recall any package for Mr. Mookini?

A. I don't recall.

Q. And when you got through, there was not another single box left in the truck?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. And do you recall whether you were the man that took the first box off?

A. From the back of the truck?

Q. Yes.

A. Yes; I am the only one in the truck there.

[776]

Q. Nobody went to the truck before you did?

A. No sir.

Mr. MOORE: That's all.

Mr. MOORE: One more question. What kind of a box were these oysters in?

A. I don't think there were any oysters; I can't recall whether they had any oysters that day or not, it being so far back.

Q. Well, did you call off oysters?

A. I can't remember, sir; I think there was some——

Q. Did you call off flowers?

A. Yes, I can remember the flowers.

Q. Strawberries?

A. I can't say for sure.

Q. You don't recall strawberries?

A. No, I don't recall; and it has been always the custom when we enter Schofield there's two guards at the gate that stop the truck and investigate what's on the truck before letting us in.

Q. You mean to tell me that the guards go through all the truck and take up all the boxes and see what's in it?

A. No, not all; they just see if anything unusual about the truck.

(Testimony of Louis Hutchinson.)

Q. In other words, they go up to the truck and kind of give it the "once over", is that it?

A. Yes sir.

Q. But they don't lift up things, they don't do that?

A. No sir.

Mr. MOORE: All right; that's all. [777]

Redirect Examination

By BARRY S. ULRICH, Esq.

Q. You say you do remember the flowers?

A. Yes sir.

Q. How were they put up—in some sort of box?

A. They were in boxes.

Mr. ULRICH: I think that's all.

The COURT: The Court will now take an adjournment until 9:00 o'clock tomorrow morning. Be back in your places promptly at that time, gentlemen of the jury.

(Adjourned—11:43 a. m.) [778]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Friday, May 24th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate that the jury is present.

Mr. ULRICH: Ready for the defendants; and we do also stipulate that the jury is present.

The COURT: Let the stipulation as to the presence of the jury be entered.

Mr. ULRICH: I'll call at this time Mrs. Mookini.

MRS. MARIE MOOKINI

being first duly sworn as a witness for the Defendants, testified as follows: [779]

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Your name is what?

A. Marie Mookini.

Q. You are, are you not, the wife of Robert K. Mookini that sits here, the defendant in this case?

A. I am.

Q. How long have you been married to Mr. Mookini?

A. In 1928.

Q. You are, are you not, in the employ of the Consolidated Amusement Company yourself?

A. Yes.

Q. You met Mr. Mookini when you were both, I believe, in the employ of the Consolidated Amusement Company; is that right?

A. Yes, that's right.

(Testimony of Mrs. Marie Mookini.)

Q. And when he left the employ of the Consolidated Amusement Company you remained on with them, did you?

A. Yes.

Q. And are still employed by the Consolidated Amusement Co.?

A. Yes, I am still there.

Q. Mrs. Mookini, in the month of June or April of last year—I'll say the month of April of last year, where were you and Mr. Mookini living?

A. On Fitzpatrick Apartments.

Q. Fitzpatrick Apartments, at Waikiki, is that right?

A. Yes.

Q. And at that time how large a family was there; how many people in your home?

A. My son, and my nephew, and my niece. [780]

Q. And Mr. Mookini?

A. Yes.

Q. You recall, do you, that Mr. Mookini at some time in the early part of last year became connected with the Civilian Conservation Camp at Schofield Barracks?

A. Yes.

Q. Now Mrs. Mookini, I'll ask you to state whether or not you had an operation some time during the Summer of 1934, a major operation, and, if so, when that was?

A. June 18th.

Q. June 18th, that's the day you were operated on?

(Testimony of Mrs. Marie Mookini.)

A. I was operated on June 18th, and admitted to the Queen's Hospital on the 17th.

Q. You went to the Queen's Hospital on the 17th?

A. On a Sunday night.

Q. Your surgeon, I believe, was Dr. Milnor, of The Clinic, is that right?

A. Yes.

Q. How long were you in the hospital?

A. From June 17th up to July 14th.

Q. There has been evidence in this case, Mrs. Mookini, relative to *grocers* which were supposed to have been sent to your home by Lee Chong Company; do you know Mr. Lee Chong or have you ever seen him before, the other defendant, who sits here (indicating)?

A. Yes.

Q. You have seen him?

A. Yes.

Q. Now, will you state to the jury just what the extent of your or your husband's dealings, so far as you know, with the Lee Chong Company was during the Summer of last year; when do you recall first getting anything at all from [781] Lee Chong or the Lee Chong Company?

A. Some time in May, the latter part of May.

Q. And was it a cash transaction, or otherwise?

A. Cash; I buy my groceries for cash.

Q. Do you recall ever getting anything from him or having your husband bring anything from there

(Testimony of Mrs. Marie Mookini.)

otherwise than cash purchases before, say, September of last year?

A. Beg your pardon?

Q. Did you ever have any dealings with Lee Chong Company except on a cash and carry basis, as we might say, before September?

A. Before September, yes, everything we bought was cash.

Q. Do you recall the circumstances under which any account was opened with Lee Chong Company?

A. Yes, in September.

Q. You remember how it happened that you opened an account?

A. Yes, because I had a lot of obligations to meet, and doctors bills and hospital and nurses, and we asked Mr. Lee Chong to extend us credit.

Q. I show you an exhibit in this case, being Defendants' Exhibit 4, purporting to be the account with Mr. Mookini on Mr. Lee Chong's books, and ask you if that accords in a general way with your recollection of the goods that were sent to you by Mr. Lee Chong on this credit basis?

A. Yes.

Mr. MOORE: May it please the Court, I don't like to delay things, or anything of that kind, but we've had straight through here leading questions "Did you ever deal in anything up until September", and so on and so forth, and then here [782] we come to an account book, and he takes and shows her an account book without even exhausting

(Testimony of Mrs. Marie Mookini.)

her recollection or anything of that kind. May it please the Court, I object to this line of examination.

Mr. ULRICH: Well, I'll submit the question, if Your Honor please. I think it's reasonable to ask her whether or not she recognizes this as a fair statement of her account between herself and Lee Chong. Of course she wouldn't remember every item; she probably has seen bills from time to time. I'll take the Court's ruling on the question. There's nothing vital in leading a witness; it's permissible within reasonable limitations. Perhaps I had better withdraw the question and ask her this:

Q. Were statements sent to you from Lee Chong Company?

A. Yes.

Q. Did you get bills?

A. Yes.

Q. I now show you this account and ask you whether or not that accords with your recollection of the bills you got from Lee Chong?

A. It does, exactly.

Q. Mrs. Mookini, a certain witness has testified in this case to the effect that in the month of July there was ordered and sent to Mr. Mookini as his personal groceries, groceries in the amount of over 100 dollars. I believe you've said that you were in the hospital after a certain time?

A. Up to July 14th I was in the hospital.

(Testimony of Mrs. Marie Mookini.)

Q. Up to the middle of the month you were in the hospital?

A. Yes.

Q. After you came back from the hospital and, so far as you [783] know, during the time you were at the hospital, were groceries in anything like that amount used in your home?

A. No, never.

Q. In any other month did you ever have occasion to make use of groceries in the amount of $100.00?

A. Never was my grocery bill amounting to $103.00 or $100.00.

Q. During the month of April where were you buying your groceries?

A. At K. Miyata's store, on King Street, and N. Aoki.

Q. They are right close to where you live?

A. Yes, at Waikiki.

Q. How were the groceries bought in your home during the month of April and until you went to the hospital?

A. How were they bought?

Q. Yes; who did the buying?

A. I did the buying, for cash.

Q. Did you have occasion at any time to have Mr. Mookini bring things home for you?

A. Very seldom, unless I asked him to, and that was paid for.

(Testimony of Mrs. Marie Mookini.)

Q. This same situation existed after you came back from the hospital?

A. Yes.

Q. Excepting that you started this charge account with Lee Chong?

A. Yes, in September, because I couldn't see my way clear to meet all the obligations that we had.

Mr. ULRICH: I think that's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. What do you do at the Consolidated Amusement? [784]

A. I am a stenographer.

Q. And your hours of employment are what?

A. 8 to 4.

Q. Daily?

A. Except Saturday.

Q. And when do you get through on Saturday?

A. 12 o'clock every third Saturday—one o'clock every third Saturday, and 12 o'clock two Saturdays. We have three stenographers up there, and we all shift.

Q. Meaning, as I take it, three Saturdays you say you work until——

A. Three Saturdays I go home at 12.

Q. And the next Saturday you stay until one?

A. Yes.

Q. You say you first started purchasing from Lee Chong in May of last year?

A. Yes.

(Testimony of Mrs. Marie Mookini.)

Q. And you didn't start—you never purchased there before, did you?

A. No.

Q. Did you do the purchasing at Lee Chong's?

A. Beg your pardon?

Q. Did you do the purchasing at Lee Chong's?

A. Yes, sometimes.

Q. Sometimes you did?

A. Just on one occasion, when my husband was home on a Sunday, and I told him—he was going out swimming, and I told him to get me some groceries; and when Mr. Lee Chong delivered them I paid for them.

Q. Your husband then went down to Lee Chong's and ordered them?

A. No, he did not go to Lee Chong's; he telephoned to [785] Mr. Lee Chong; he was home on a Sunday from the Camp.

Q. And you never—did you ever go to Lee Chong's to buy groceries?

A. I did sometimes, yes.

Q. And he delivered them for you?

A. No, I delivered them myself; I took the groceries home myself.

Q. Did your husband ever take them home?

A. Not that I remember.

Q. The best of your recollection is that you always took the groceries that you ordered yourself?

A. Yes.

(Testimony of Mrs. Marie Mookini.)

Q. And the only exception to that was the time, the first time you bought, when your husband called up Mr. Lee Chong on a Sunday——

A. Yes, when he was home from the Camp.

Q. When he was home from the Camp; and on that occasion Mr. Lee Chong delivered them?

A. Yes.

Q. And you paid him cash for them?

A. Yes.

Q. And thereafter, right up until you opened this charge account, you were trading there quite a bit?

A. Very seldom.

Q. Very seldom?

A. Yes.

Q. And your husband never, to your knowledge, ever brought home any groceries?

A. No, not to my knowledge.

Q. He doesn't assist in the family shopping at all?

A. Well, I am the budgetarian in my family.

Q. You hold the sack, is that it? [786]

A. What do you mean "sack"; I don't understand.

Q. In other words, you take care of the family exchequer?

A. Yes, I take care of our budgeting, if that's what you mean.

Q. In other words, you take care of the money and spend it?

(Testimony of Mrs. Marie Mookini.)

A. Yes, I do; I don't spend it.

Q. What?

A. I spend it to buy my groceries and whatever I need.

Q. That's what I mean, Mrs. Mookini; I don't mean that you take the money and throw it out in the street or anything like that, but that you are the one that takes care of the family moneys. You say you were in the hospital from June 17th to July 14th; during that time was your niece or nephew and your son living out to this apartment?

A. My nephew was on Kauai.

Q. How about your niece?

A. She was there.

Q. And your son, he was where?

A. He was with my niece.

Q. And where were they living?

A. Who?

Q. Your husband, your niece, and your boy?

A. He was down the Camp when I was in the hospital.

Q. The boy was down at the Camp too?

A. Yes.

Q. The boy lived out at the Camp with Mr. Mookini?

A. Yes.

Q. He had all his meals with Mr. Mookini?

A. I guess so; I wasn't there, I don't know.

Q. And you didn't keep this apartment at all while you were in the hospital?

A. Who I kept?

(Testimony of Mrs. Marie Mookini.)

Q. Well, the family? [787]

A. Why yes; I wasn't going to throw her out.

Q. Throw who out?

A. My niece; she was home; I just told you.

Q. She was living there?

A. Yes.

Q. How old is your niece?

A. 24.

Q. And does she work?

A. She stays with me.

Q. She doesn't work?

A. No.

Q. But you say, during the time you were in the hospital, instead of the boy staying with your niece at your apartment he was out with the boy's father?

A. Yes; there's nothing wrong in that.

Q. What's that?

A. I say, I don't see anything wrong in that.

Q. I don't see anything wrong in it, particularly, myself. Who bought the groceries during that period of time for your household out here?

A. We didn't buy any groceries for the house; she had her meals out.

Q. That is, your niece had her meals out?

A. Yes.

Q. And how old is this boy of yours?

A. 10.

(Testimony of Mrs. Marie Mookini.)

Q. Was there only one delivery made to your house by Lee Chong of groceries during this period of time?

A. Yes.

Q. And did he himself deliver it?

A. Yes, he himself delivered it to my house.

Q. Do you know a little boy by the name of Hutchinson who used to work for Lee Chong?

A. Who?

Q. Hutchinson. [788]

A. I don't know if I do; I don't recall the name.

Q. Do you know Mr. McGregor?

A. No.

Q. This Hutchinson boy didn't go out and deliver groceries to your place?

A. No.

Q. He never did?

A. No.

Mr. MOORE: That's all.

Redirect Examination

By BARRY S. ULRICH, Esq.

Q. Mrs. Mookini, I don't imagine you went out and examined the wagon to see who was on the wagon; you don't know whether any delivery boy was on the wagon or not; you knew the man that you saw bring the goods in the house was Lee Chong?

A. Yes.

(Testimony of Mrs. Marie Mookini.)

Q. Who may have driven the car or sat on the driver's seat you don't know?

A. I don't know, because I never went out to look on the seat.

Q. This little boy, I believe, is Mr. Mookini's son by a prior marriage, is that right?

A. Yes.

Q. Were there ever any groceries delivered in a large quantity at your place at all that you didn't use for the family, or anything of that kind?

A. No, never.

Q. You didn't store groceries around the house?

A. There's no room for storage, the house is so small.

Q. Nothing of the kind ever happened, did it?

A. No, never.

Mr. ULRICH: That's all. [789]

Mr. ULRICH: Mr. Mookini, I believe, was on the stand for further direct examination.

ROBERT K. MOOKINI

being recalled to the witness stand for further direct examination, testified further as follows:

Mr. ULRICH: Mr. Mookini, on your cross-examination you were cross-examined relative to certain questions and answers that it was stated were put to you and received from you on the occasion of your examination by the Grand Jury. I

(Testimony of Robert K. Mookini.)

want to call your attention to certain of those questions and answers which I now have before me, and particularly to those questions and answers concerning which the prosecuting attorney examined you. He called your attention in the first instance, as I recall it, to the following questions and answers:

"And how did you happen to receipt for those?"

That's on page 2; referring to one of the receipts for those bills which had been shown to you, that is, the corrected bill or the changed bill on the first order. And your answer was:

"Three days after the goods were delivered. This was the original. I wasn't there when the goods arrived."

Q. What goods were you referring to?

A. The goods of May 12th.

Q. The Mothers' Day order?

A. Yes sir.

"This line here represents that the goods had to be changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund." [790]

Q. Particularly this language:

"This line here represents that the goods had to be changed over into vegetables."

The prosecuting attorney called your attention at that time to United States Exhibit "B", and I be-

(Testimony of Robert K. Mookini.)

lieve you told him that you were referring to these lines that were drawn on that exhibit, in that answer; is that right?

A. Yes sir.

Q. As a matter of fact, when did you first know that such lines had ever been put on that paper?

A. About September 13th, when I was called before Mr. J. W. Lloyd.

Q. And when you said that this line meant it "had to be changed", were you talking about anything you knew at the time the change was made?

A. No; I tell you Mr. Moore asked me, "Do you know what those lines represent?" Well, I had been already informed on September 13th that these lines represented changes.

Q. In other words, you were testifying, or were you, to something that you learned as a result of the investigation which had been later carried on?

A. Yes, after I had been called before Mr. Lloyd.

Q. Going on:

"because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund."

When did you learn that Captain Miles was informed of the fact that those things couldn't be bought out of the Mess Fund? [791]

A. Well, during the first discussion that took place before the Mothers' Day dinner.

(Testimony of Robert K. Mookini.)

Q. You had known that all along?

A. Yes.

Q. Now then, going on with your answer:

"Mr. Cunningham had instructions to take this to town and have it changed."

When did you find out his having been instructed to take it down and have it changed?

A. Not at that time; not until September.

Q. Then you said:

"Not knowing he had been to make the change I came in to have it done."

Now, Mr. Mookini, as you recall the words or the questions or the answers that you gave at that time, did you and could you have said exactly that?

A. That's why I said that statement is distorted.

Q. For example, just changing the sound a little by: "Not knowing he had been to make the change, I came in to town"; is it possible you might have said that?

A. Because I came into town to take my wife to The Clinic.

Q. But what words the stenographer may have put down, you don't know?

A. No, I don't.

Q. Did you ever have a chance to go over this and see whether this stenographer had properly transcribed your answers as given?

A. No; that's the first time I have seen this document.

(Testimony of Robert K. Mookini.)

Q. Have you had occasion to dictate matters to a stenographer?

A. I have had about nine years of that experience, dictating.

Q. Have you ever found it necessary to make rather radical changes in typewritten matter? [792]

A. I think my wife will bear me out as to that.

Mr. MOORE: Let the witness testify, and not counsel; one question after another leading and suggestive, may it please the Court. Leading a bit isn't so bad, but one right after another I certainly object to that.

The COURT: There's no unanswered question before the Court at this time.

Mr. ULRICH: Then the remainder of the answer which counsel called to your attention:

> "This bill was given to me and Cunningham said that the Captain wanted to have it changed."

Now, when did you know that the Captain had ordered Cunningham to change it?

A. Around September; later.

Q. Were you doing more than attempting to tell the prosecutor at the time what your then knowledge was, that is, when you testified before the Grand Jury?

Mr. MOORE: May it please the Court, I object to that question as leading and suggestive and putting the words in the mouth of this witness. He can ask him what he thought at that time.

(Testimony of Robert K. Mookini.)

The COURT: The question is leading; the objection is sustained.

Mr. ULRICH: Well, state in your own words what you were trying to do when Mr. Moore was questioning you?

A. I was informing him of what I was informed; I was telling Mr. Moore in the Grand Jury room what I was informed in Mr. Lloyd's office. When Mr. Lloyd brought this thing to my attention I was hauled up there; I didn't even know anything existed like that. [793].

Q. The next question:

"Did you have anything to do with the changing of these?"

Answer: "No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess funds."

Question: "Nevertheless you signed this bill as receiving these particular things?"

Answer: "Yes."

Question: "And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?"

Answer: "I can't say that they were not true and correct. The amount seemed to be the same. I didn't check it thoroughly."

Q. Is that substantially what you said at that time?

(Testimony of Robert K. Mookini.)

A. Yes, about; something to that effect.

Q. Here is another question, for example, which was propounded to you by the prosecuting attorney:

"And when you knew the voucher came out you knew that it had been changed?"

When did you first know even about the voucher coming out, so far as that's concerned?

A. What voucher?

Q. They were talking now about the Mothers' Day voucher.

A. In September the first I found out.

Q. The only contact you had with it—when was the only contact you had had with it?

A. In September, that's how I found out those things were in this mess like this. [794]

Q. And, aside from the time when you had put your name to this paper that was handed to you in Lee Chong's office and Cunningham saying it was all right, had you ever seen this thing, or known what was done with it, or when it came out to the Camp, until later?

A. No.

Q. Then there was some testimony, and another question and answer here about Mr. Lloyd, this way:

"I instructed him to make two bills. On May 16th Mr. Lloyd came down and took us over the coals for buying stuff which was like oysters."

(Testimony of Robert K. Mookini.)

Now, was there any talk, as you recall, about two bills in connection with the oysters or the Mothers' Day order?

A. Well, I think in that discussion Miles says,—I didn't have anything to do with it—"the only way you can handle that is to have a segregated account." But this May 16th, about Mr. Lloyd coming out there——

Q. What was the conversation; what was Mr. Lloyd's talk about?

A. He came out there and generally complained that the boys were living better than the boys living in the Royal Hawaiian; he says, "They are getting too good feeding; it might make bad feeling because our meals were better than the men at the barracks; there may be some criticism."

Q. Was there any talk about oysters not having been oysters and about having changed the bill? One item says about oysters.

A. He just at random spoke——

Q. I mean, was there any talking about what we're talking about now, about changing oysters into flowers? [795]

A. No, no.

Q. Just that oysters represented too high a form of living?

A. Yes.

Q. Then, another part of the answer particularly called to your attention by the prosecuting attorney:

"So in the meantime we were having——"

(Testimony of Robert K. Mookini.)

That's the same answer, a little further along, page 4:

"So in the meantime we were having several meetings, Miles, Cunningham and myself, around the office; some of the boys were there, and even then I apprised them of the fact that we couldn't buy anything out of subsistence funds that was not food. So he authorized me to go ahead. The first estimate submitted"——

And did you go ahead and estimate these things?

A. I did.

"The first estimate submitted to Miles was about $800.00, which was ridiculous. In getting other figures it was reduced to 600 and some odd dollars. He said to go ahead. So . . . I went down to make the arrangements and bought all the stuff"——

Mr. MOORE: "Before September 1", isn't that in there?

Mr. ULRICH: "So before September 1 I went down to make the arrangements and bought all the stuff, told them to send it out and make two bills, one for subsistence and the other for extras to be paid out of the Canteen Fund. So when we had the goods hauled out Cunningham went out with them. I was up town."

Q. Now, when you went down to make the arrangements, the [796] language attributed to you here was that the arrangements included actually

(Testimony of Robert K. Mookini.)

buying the stuff; it reads, "to make the arrangements, bought all the stuff". Now, did you say exactly that—that you "bought all the stuff"?

A. No; I had reference to the discussion of the estimate—substantiating the estimate.

Q. If the very similar sounding language "to make all the arrangements about how the stuff" had been used, that might have represented what you really said? That's a leading question; but could it have been possible that you said something of that kind?

A. It may have been; I'm not sure.

Q. "Told them to send it out", and so forth and so on. In connection with any of this phase or of making arrangements down town with anybody, did you have any discussion with anybody about how this thing was to be billed?

A. No.

Q. Anything that may be reported in there giving that impression doesn't accurately represent what you've testified to here, does it?

Mr. MOORE: I object to this.

Mr. ULRICH: I withdraw that——

Mr. MOORE: I don't like to keep interrupting, but I certainly object to this putting the words in his mouth time after time after time, right down the line. May it please the Court, I'll ask the Court, so that I don't have to keep interrupting, to instruct Mr. Ulrich to refrain from using that sort of stuff; let the witness testify.

(Testimony of Robert K. Mookini.)

The COURT: Counsel knows what questions are proper, as well as the Court does or yourself. [797]

Mr. ULRICH: I do, Your Honor; and in the matter of conducting an examination of this kind I am trying to do it as best I know how. Much more tedious, of course; I can get it all from the witness, and I'll try to do it that way.

(At request of Mr. Ulrich, Reporter reads last question)

Q. Did you testify to anything or did you intentionally say anything by which you wanted to mean that you had any discussion with dealers in town about making the charge one way or another?

Mr. MOORE: Same objection, Your Honor.

Mr. ULRICH: I don't think that's objectionable, Your Honor. I have called his attention to these questions and answers and I have asked him whether he intentionally said something like that before the Grand Jury. I think that's proper; I don't know how else I can get the question to him.

Mr. MOORE: Very well; get it over with.

The COURT: Isn't it to be presumed that he intentionally said what he did say?

Mr. ULRICH: That he intentionally said what is reported here. Of course, what he did say is another thing.

Q. Did you intend to say anything of that kind?

A. No, I never discussed about how things were to be charged, because Miles was the one that had charge of or was custodian of the funds out at the Camp.

(Testimony of Robert K. Mookini.)

Q. I call your attention to another part of the examination before the Grand Jury, and to this question and answer:

"There is an item on that voucher under date of May 12th, 1934, of 500 fresh oysters. Do you know whether or not those oysters were ever delivered?" [798]

Mr. MOORE: What page is that, Mr. Ulrich?

Mr. ULRICH: Five.

(Answer): "It was for flowers, that's what I was informed of the change of that voucher."

(Question): "Our information, Mr. Mookini, is that those 500 oysters were for a case of liquor which came out there and was delivered into the kitchen, stayed there possibly a half hour or more, and then by one of the assistant cooks was taken to your quarters?"

Do you recall that question being propounded to you by Mr. Moore at that time?

A. Something to that effect.

Q. And your answer was:

"I don't think it is the truth."

In the course of that examination did Mr. Moore question you at all about a delivery of liquor such as has been testified to in this case, namely, not a case of liquor, but three bottles of whiskey and three bottles of gin?

A. No.

Q. Did he question you about a case of liquor, or liquor, that had been left, not for half an hour, but all day?

(Testimony of Robert K. Mookini.)

A. No, he did not.

Q. Or about liquor that had been taken across by Mr. Cunningham and somebody else?

A. Referring to where I said I was informed of the change for the flowers, I want to say, in September was the first I knew that oysters were for flowers.

Q. "Was there a case of liquor ever delivered to your quarters?" [799]

(Answer): "I bought my own."

"Q. Did you bring it out there yourself?"

"A. I brought it out there in my own car and in several instances on the bus, too."

"Q. Did you ever get a case consisting of three or four bottles of ordinary gin, a couple of bottles of sloe gin, and a couple of bottles whiskey?"

Q. Do you recall that question?

A. Something like that.

"A. No. The gin I brought out there was Gordon Dry—and the last time I brought it out there I brought it to the luau from the Pacific Brewing."

"Q. Did you ever pay for that liquor?"

"A. I have a bill for it. I haven't worked for five months. I just started working for the Legislature during the last three weeks."

Q. You have been questioned by the prosecuting attorney about having made some purchases or not

(Testimony of Robert K. Mookini.)

with Mrs. Miles for this luau dinner, as I understand it?

A. Yes.

Q. Will you state to the jury just what happened in connection with any purchases that you may have made or anything you may have done with Mrs. Miles in that respect?

A. Captain Miles sent me in to see Mrs. Miles because, he told me then, Mrs. Miles was handling the purchases of the Hawaiian pudding and Hawaiian foodstuffs, and for me to go down and see what progress she had made. At that time she was at the Capitol Building here, in the Delegate's office; so I went there and I asked her—I informed her [800] what the Captain sent me in to ask her about. Well, she said she had made some arrangements, and she asked me if my car was there, the station wagon, and I said no, the car had gone out, I had loaned it to somebody, I don't know who it was; then she informed me, "My car is out there"; so I says, "Will you drive me to the market?" "Which market you going to?" "Down to King Market." So I got in the car, I remember, about 11 or 12 o'clock, drove on down to King Market, and parked outside, and she got out of the car and went in; in 15 minutes she came back, and I drove her back. That was the last time.

Q. Did you go in with her to make the purchases?

A. No, I didn't.

(Testimony of Robert K. Mookini.)

Q. You stayed in the car?

A. Yes.

Q. Do you know what she bought in there?

A. No, I didn't; she was supposed, as I understood, to handle the Hawaiian foodstuffs, that's all I know.

Q. Was there a talk about where you could buy a Hawaiian pudding, or any talk about a Hawaiian pudding, or do you recall it?

A. Mr. Miles told me that Mrs. Miles knew; that there was a friend they had that they could get the stuff from; and, for that matter, the pudding didn't arrive out there, and was forgotten and never picked up.

Q. She knew where she wanted to go for the pudding, or did you take her where she wanted to go?

A. She told me to drive her to the King Market, that's on Kekaulike and King Streets, Waikiki corner.

Q. In answer to another line of cross-examination by [801] counsel, you stated that your trouble at the time that you were discharged from the Reserve Corps had to do with helping keep out of trouble a man with a wife and little child. I'm not going to ask you about that any more than to ask you what office that man held and who was it?

A. He was a lieutenant in the Navy—Lieutenant Rigby.

Mr. ULRICH: I think that's all.

(Testimony of Robert K. Mookini.)

Cross-Examination

By WILLSON C. MOORE, Esq.

Q. Mr. Mookini, you say that in the Grand Jury room I never asked you anything about a box of liquor?

A. No, I said you asked me something to that effect there, but not about a case; you asked me about 3 bottles gin, and you didn't tell me that there was——

Q. What did you understand when I asked you this question: "Was there a case of liquor ever delivered to you, to your quarters?"

A. You asked me was a case of liquor—but here you didn't say "case"; you said "3 bottles whiskey and 3 bottles of gin."

Q. Wasn't that in a case?

A. At that time you told me "case" it may have been a case of 24 bottles, maybe 6 bottles, maybe 12.

Q. And I suppose if you had understood you'd have said "Of course I got that."?

A. No, I didn't get it.

Mr. ULRICH: I object to the question, if Your Honor please. He was asking him if the thing was ever delivered to him, and his answer was that he brought it out there himself. [802]

Mr. MOORE: May it please the Court, I am going to ask the Court's indulgence for one question that I overlooked to ask on the cross-examination originally.

(Testimony of Robert K. Mookini.)

Q. Mr. Mookini, do you recall after the first of September last year, after this investigation had started, that you and Dr. Enright were having a meal at Kemoo Farm and this investigation of the Camp was being discussed, and you said, in effect, "I am going to get those 'sons of bitches' at the Camp, and Cunningham is one of them." Did you make such a statement out there?

A. I don't recall making that statement. If Dr. Enright said that, he must be lying, because he's been hanging around with Miles and Cunningham and Colman and Gibson.

Q. Did you make that statement, or didn't you?

A. No!

Q. Now, Mr. Mookini, didn't you ever get a letter from the United States Department of the Interior, office of the secretary, Washington, D. C., telling you that you were discharged and your services terminated?

A. I don't recall; I have had several letters written by my counsel.

Mr. ULRICH: We have all the letters here; I thought I put them all in, but evidently I didn't. (Mr. Ulrich hands document to Mr. Moore).

Mr. MOORE: I show you a copy of that letter; read that.

A. (after examining document): I don't remember whether I did get a letter; I remember talking to Mr. Lloyd one time about it.

Q. About this letter, didn't you?

A. About something like that, to that effect. [803]

(Testimony of Robert K. Mookini.)

Q. Have you got the original of this?

A. I don't think so.

Mr. MOORE: We'll offer the copy, may it please the Court, it being the best evidence available at this time.

The COURT: Is there any objection?

Mr. ULRICH: If the witness—there seems to be some question as to whether the witness got that, or his counsel. We're perfectly willing it should go in, on the Government's indication that it was sent, and if we find it we'll produce the original. I don't want to keep anything from the jury; just for what it's worth I am willing to have it go in.

The COURT: It will be admitted.

(Marked—"United States Exhibit N")

Crim. #8518

U. S. EXHIBIT "N."
Admitted

United States Department of the Interior, Office of the Secretary, Washington.

January 9, 1935.

Mr. Robert K. Mookini
National Park Service.

Sir:

Your services as Recreation Officer at $200 per month, Territory of Hawaii, have been terminated, with prejudice, for the good of the service, by the

(Testimony of Robert K. Mookini.)

Secretary of the Interior, upon recommendation of the Director of the National Park Service, effective at the close of October 17, 1934.

Respectfully,

(Sgd) GUY W. NUMBERS

Acting Chief, Division of Appointments, Mail and Files.

Through the Director, National Park Service, Order No. 454-ECW.

A True Copy

(s) HERBERT BALDWIN

Capt. F. D.

Incl. #3

Mr. MOORE: You said, I believe, that Deville had you suspended. Who wrote you the letter suspending you?

A. Did I say Deville had me suspended?

Q. Yes, Deville; that's what I understood you to say.

A. Mr. Moore, I don't think you correctly remember the statement. I was informed later on that it was through Captain Baldwin that I was suspended.

Q. Oh, it was through Captain Baldwin?

A. Why, this Deville run to me and apologized, "I didn't have you suspended; it was somebody else"; why did he come to me to clear himself first?

Q. Then I was incorrect when I was under the impression that you said Deville had you suspended?

A. Yes.

(Testimony of Robert K. Mookini.)

Q. It's Captain Baldwin?

A. Well, I was informed of it three months ago, that Captain Baldwin was the one, and it's borne out in this letter, too; [804] he's the "local disbursing officer."

Q. You went out and tried to collect your pay, didn't you?

A. Well, why shouldn't I?

Mr. MOORE: That's all.

Mr. ULRICH: Captain Baldwin is this "disbursing officer," is he not, mentioned in the letter, requesting your dismissal or suspension?

A. Yes.

Mr. MOORE: I'd like to read this to the jury. Gentlemen, before we pass over this thing just admitted in evidence as United States Exhibit "N":

(Mr. Moore reads Exhibit "N" to the jury)

Re-direct Examination.

By BARRY S. ULRICH, Esq.

Q. Calling your attention to Defendants' Exhibit 5, reading it in part:

> "The records of this office show that Mr. Mookini was suspended from his position as a recreational officer at the Wahiawa camp by the Governor of Hawaii on October 17, at the request of the local disbursing officer."

Q. Who was that "local disbursing officer"?

A. Captain Herbert Baldwin.

Q. That's the man you just spoke of?

A. Yes.

(Testimony of Robert K. Mookini.)

Q. What connection did he have with Deville?

A. Well, Deville is working out of his office—you don't have to laugh, Mr. Moore.

Q. Was Deville working in the office?

A. Deville was in conference up there with Captain Baldwin [805] and Miles and Cunningham, and Captain Baldwin, as I was informed by Mr. Lloyd, had requested my discharge at first, and Mr. Lloyd asked him for what reason, what were the charges; he said he wanted to have me removed; then after a while the suspension come through; he says if I was not discharged he would not disburse any more money to C. C. C. camps on Hawaii.

Q. That's this disbursing officer?

A. Yes.

Mr. ULRICH: That's all.

(Recess—9:59 to 10:05 a. m.)

Mr. ULRICH: Just one question, Mr. Mookini:

Q. There has been some evidence about you having you having told someone or said to someone that there were oysters, as I recall it, on the bill of fare out there at the Mothers' Day dinner. As a matter of fact, were there oysters eaten out there that day on the dinner?

A. On the menu we had oyster stew.

Q. It was oyster stew?

A. Yes.

Q. Do you know where they came from, whether they were held over from other orders?

(Testimony of Robert K. Mookini.)

A. Because Cunningham fixed the menu, approved by Miles, and on that menu it had oyster stew.

Q. You just happened to remember they were there?

A. And then when I came in, Mr. Lloyd asked me, in September, and I said I remembered having oyster stew. When I went out there the menu had disappeared from the month of May to June, everything was gone.

Q. But, to the best of your recollection, there were oysters on that menu?

A. Yes. [806]

Q. There were also flowers?

A. Yes, I remember flowers, too.

Mr. ULRICH: That's all.

Re-cross Examination.

By WILLSON C. MOORE, Esq.

Q. Who kept these menus?

A. The menus was on the file, right alongside of Captain Miles' desk.

Q. And you as Mess Officer had charge of them, did you?

A. No, I didn't have direct charge of it; it was open records standing on your board files.

Q. Right in the office?

A. Right in the office, and everybody walking in and out.

Q. Were you present when they had this oyster stew, or were you out?

(Testimony of Robert K. Mookini.)

A. What's that?

Q. Were you at the meal when they had this oyster stew?

A. You mean, Mothers' Day?

Q. I don't know when it was you said they had oyster stew.

A. I said, Mothers' Day.

Q. You had oyster stew?

A. Yes. I didn't eat that day, because I was too busy.

Q. Oh, you didn't eat?

A. I was there superintending the Mess.

Q. Do you know whether they had oyster stew?

A. I remember that correctly.

Q. You remember that distinctly?

A. Yes.

Mr. MOORE: That's all.

Mr. ULRICH: Defendants rest. [807]

LILY SHELTON

was duly called and sworn as a witness for the Plaintiff, in rebuttal, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name?

A. Lily Shelton.

Q. Where are you employed?

(Testimony of Lily Shelton.)

A. In the office of the United States Attorney for this District.

Q. In what capacity?

A. Stenographer.

Q. How long have you been a stenographer?

A. For something over nine years.

Q. And you have been completely engaged in the practice of your profession for that period of time?

A. I have.

Q. Were you employed in the United States Attorney's office for this District on the 19th day of March, of this year, in the capacity of stenographer?

A. I was.

Q. On that day did you have occasion to attend the meeting of the Federal Grand Jury?

A. I did.

Q. Do you know Mr. Robert Mookini here?

A. By sight.

Q. Was he present at that meeting of the Grand Jury?

A. He was.

Q. And in what capacity was he there, if you know?

A. As a witness.

Q. Did he give testimony?

A. He did. [808]

Q. Did you do anything with reference to that testimony?

(Testimony of Lily Shelton.)

A. I transcribed the notes which I took at that hearing.

Q. Did you take stenographic notes?

A. I did.

Q. Of his testimony?

A. I did.

Q. All of it?

A. All of it.

Q. Miss Shelton, I show you a document here; do you know what that is?

A. It's the transcription of the notes I took at that time.

Q. Is that the transcription, or not?

A. It is a copy.

Q. Of the original transcript?

A. Carbon copy.

Q. Of your notes?

A. Yes.

The COURT: It is a carbon copy?

A. A carbon copy.

Mr. MOORE: Made at the same time you made the original?

A. Yes.

Q. And this document here (indicating), what is that?

A. That is the original of my transcription.

Q. Of your notes of the testimony of Robert Mookini before the Grand Jury?

A. Yes sir.

Mr. MOORE: Will you mark this original for identification, then I'll hand it back to Mr. Ulrich.

(Testimony of Lily Shelton.)

(Marked "United States Exhibit No. 7 for Identification.")

(Mr. Moore returns document to Mr. Ulrich.)

Q. Have you your original notes?

A. I have.

Q. Miss Shelton, I'll ask you to read from your original [809] notes from the beginning, and I'll interrupt you, possibly, from time to time to have you skip things that have no bearing here; will you kindly proceed.

A. (reading):

"Your name is Robert K. Mookini?"

"Yes."

"And you understand at this time that the Grand Jury is making an investigation with reference to certain things which have taken place out at the C. C. C. while you were an officer out there?"

"Yes sir."

"And you understand that by virtue of your being called before the Grand Jury you do not have to testify?"

"Yes sir."

"And before coming into this Grand Jury room you signed this waiver?"

"I did this morning."

"And that is your signature?"

"It is."

Mr. MOORE: Just a moment. At that time was a document handed to you here to mark, if you recall?

(Testimony of Lily Shelton.)

A. It was exhibited to him; I don't know that it was actually handed to him.

Q. Very well.

A. (continuing reading):

"And you also realize that there is a possibility that as a result of this investigation this Grand Jury may return a true bill of indictment against you?"

"I do."

"When were you first employed at the C. C. C. Camp at Schofield Barracks?" [810]

"January 29, 1934."

Mr. MOORE: Continue.

A. (continuing reading):

"And at the time who was in charge of the Camp?"

"Major Mahaffy."

"What office, if any, did you hold?"

"Recreational Officer."

"Did you ever become Mess Officer of that Camp?"

"I was asked to help by Miles and Mahaffy because the Mess was running behind."

"Did you take over the duties at that time?"

"I assisted Mr. Gibson and I was doing mess work."

"I understand Mr. Gibson was quartermaster?"

"Quartermaster, yes."

"But I understand, Mr. Mookini, later on Mr. Gibson's duties were more or less confined

(Testimony of Lily Shelton.)

just to the regular quartermaster, and that you actually took over the duties of Mess Officer?"

"Yes, I did."

"When you first took over your duties as Mess Officer where were you purchasing vegetables, fruits, etc.?"

"At first my duties as Quartermaster were split up whereby I was handling the open market purchases; that would take in vegetables and outside purchases. Mr. Gibson was handling all subsistence bought from the quartermaster at Schofield—canned goods and whatever the bakery had to sell."

"When you first started in, where were you purchasing vegetables?"

"Chun Hoon." [811]

"And Chun Hoon has a stall in the Army market out there at Schofield Barracks?"

"Yes, he has.

"How long did you continue buying there?"

"Right up to April 15th."

"And after that where did you purchase?"

"Vegetables bought from Lee Chong Company through commissions of Miles and Cunningham."

"What reason was given?"

"Goods from Chun Hoon was seconds and the goods were not up to quality for the amount paid."

"How were they with reference to price?"

(Testimony of Lily Shelton.)

"Sometimes even, sometimes higher; most instances higher; Chun Hoon's prices were higher."

"And you kept a fairly good check on those prices, Mr. Mookini?"

"Yes."

"And you would say that, over the period of time when you were buying from Lee Chong, as compared to the prices paid to Lee Chong they were less than those paid to Chun Hoon?"

"Yes."

"Now, you recall that out there at the Conservation Camp during the month of May that you had a special dinner or something of an affair for Mothers' Day?"

"Yes."

"And on that particular day, I believe it was May 12th, a voucher was sent out by Lee Chong for various goods delivered;—first, I'll show you a photostat copy of a purported voucher from the [812] Lee Chong Company, dated May 12th, for the C. C. C. Camp at Schofield Barracks; I call your attention to the initials down at the bottom on the line where it says 'Received the above articles.'"

"Cunningham's."

"What is the purpose for initialing that?"

"That he has actually received the goods."

"The goods listed on this voucher?"

"Yes."

"Under the same date I show you another voucher, which is somewhat similar to the one

(Testimony of Lily Shelton.)

which I just have shown you, only there are some discrepancies. Whose signature is this?"

"Mine."

"And how did you happen to receipt for those?"

"Three days after the goods were delivered. This was the original. I was not there when the goods arrived. This line here represents that the goods had to be changed over into vegetables, because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing he had been to make the change, I came in to have it done. This bill was given to me, and Cunningham said that the Captain wanted to have it changed, and so I compared the amounts and signed the second one as a matter of record for the files out there."

"Did you have anything to do with the changing of these?" [813]

"No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess funds."

"Nevertheless"——

Mr. MOORE: Just a moment. Mr. Ulrich, do you doubt the veracity of any of these notes? I don't want to read them all, to take up time. I haven't found a mistake yet; have you?

(Testimony of Lily Shelton.)

Mr. ULRICH: Well, I don't doubt that she is going to read substantially what there is here. I don't know how proficient she may be; every stenographer I have found makes mistakes in transcribing. I don't know that this is exactly——

Mr. MOORE: Very well; read on.

Mr. ULRICH: Let me suggest that you designate question and answer. They sometimes run together in your reading, and it might be difficult to tell whether it's a question or an answer.

(Witness continues reading, but without complying with the foregoing request or suggestion)

"Nevertheless you signed this bill as receiving these particular things?"

"Yes."

"And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?"

"I can't say that they were not true and correct. The amount seemed to be the same. I didn't check it thoroughly."

"You just told us that there were a lot of things—paper cups and plates—on this other voucher which [814] could not be charged to Mess funds and you informed Mr. Miles of this, and because of that this thing was changed?"

"Yes. Mr. Cunningham informed me that the Captain sent him down to have it changed."

"And when you knew the voucher came out you knew that it had been changed?"

"Yes."

(Testimony of Lily Shelton.)

"You knew that the items had been changed?"

"Yes."

"And you knew there were items put on there which were not actually delivered so as to cover up the amounts of the paper plates, etc.?"

"I knew the paper plates were; the others were changed to vegetables to put the voucher through."

"You knew that these particular items in toto were not true and correct?"

"Not according to the original bill."

"You knew in fact they were not correct, didn't you?"

"Yes."

"Now, do you know anything about these? Here is a voucher I show you, under date of September 1, 1934; these initials down here"——

Mr. ULRICH: Just a moment. Is it your intention, Mr. Moore, to offer the entire record?

Mr. MOORE: No. I tell you, Mr. Ulrich—I'll show you—(Mr. Moore indicates on transcript to Mr. Ulrich, and opposing counsel have brief conversation).

Mr. MOORE: I understand that counsel does not object to [815] the introducing of the transcript of the testimony of Mr. Mookini for the reason that it has not all been read in open Court from the stenographer's original notes, and that the only

(Testimony of Lily Shelton.)

thing he wants to reserve is the right to cross-examine on some of the writing.

Mr. ULRICH: Well, this is my objection to this, if Your Honor please; it is my contention that if this is received it should be received as a whole:

Mr. MOORE: I can't offer it any other way.

Mr. ULRICH: Subject, as I have suggested, to my right of cross-examination. I do contend, however, and furthermore—I have no objection to the offer being made without having the balance of it read by the stenographer—I still retain, for what it may be worth, my objection to the reception at all of the testimony received before the Grand Jury, on the grounds heretofore stated that I believe it would be no evidence of a confession and not admissible for any other purpose.

Mr. MOORE: Then at this time, may it please the Court, I'll offer the original transcript of the notes of Mr. Mookini's testimony before the Grand Jury, in evidence. I offer the entire document because, as I understand the rule of evidence, no document can be offered unless it is offered in its entirety. The purpose of this offer is twofold; first, that it contains recordations of prior inconsistent statements, that is, that statements in it are absolutely inconsistent and contrary to the testimony given by Mr. Robert Mookini on the witness stand during the trial of this case; and, second, that particularly the first portion of it is in rebuttal of the statements [816] by the witness Mookini on the stand

(Testimony of Lily Shelton.)

that the conduct of the proceedings before the Grand Jury were unfair as to this witness.

Mr. ULRICH: Counsel never mentioned the latter phase at all. I submit it has no rebuttal value at all; it's a list of certain questions and answers. However, I'll submit the objection.

The COURT: The Court would suggest at this time, Mr. Ulrich, that you make your objection in full so that the Court can properly rule on it.

Mr. ULRICH: Yes. I object, if Your Honor please, not to the form of the offer, but rather, as heretofore indicated, to the substance of the offer, on the ground that he cannot properly contradict the witness by evidence theretofore taken and from that witness in a prior proceeding except as to the extent that testimony indicates prior contradictory statements; that it cannot be received as an admission against interest, this not being a civil trial; and that it is not tantamount to a confession and may not therefore be used for that reason; in other words, on the ground that it is not admissible in substance; but I do not urge the objection as to form.

The COURT: The statute that has made it permissible to have this witness present in the Grand Jury to take his testimony was passed by Congress less than two years ago. Prior to that it could not have been done, with the sanction of Congress, at least. However, there are a number of Federal decisions holding that the testimony of a witness be-

(Testimony of Lily Shelton.)

fore the Grand Jury, where the witness is afterwards placed on trial for an offense involving that [817] testimony, may be used for impeaching purposes; and it certainly would be clearly admissible, as Mr. Ulrich himself intimates, by way of confession or admission, if that is involved. The Court overrules the objection. The exhibit will be admitted and properly marked.

Mr. ULRICH: We note an exception, if Your Honor please.

The COURT: Exception is allowed.

(Marked—"United States Exhibit O")

Crim. #8518 U. S. Exhibit #7, marked for ident.

U. S. EXHIBIT "O"
admitted

STATEMENT OF ROBERT K. MOOKINI BEFORE THE FEDERAL GRAND JURY ON TUESDAY MORNING, MARCH 19TH, 1935.

Questions by Willson C. Moore, Assistant United States Attorney. Stenographer, Lily Shelton.

Q. Your name is Robert K. Mookini?

A. Yes, sir.

Q. And you understand at this time that the grand jury is making an investigation with reference to certain things which have taken place out at the CCC while you were an officer out there?

A. Yes, sir.

(Testimony of Lily Shelton.)

Q. And you understand that by virtue of your being called before the Grand Jury you don't have to testify?

A. Yes, sir.

Q. And before coming into this Grand Jury room you signed this waiver?

A. I did this morning.

Q. And that is your signature?

A. It is.

Q. And you also realize that there is a possibility that as a result of this investigation this Grand Jury may return a true bill of Indictment against you?

A. I do.

Q. When were you first employed at the CCC Camp at Schofield Barracks?

A. January 29, 1934.

Q. And at the time who was in charge of the Camp?

A. Major Mahaffey.

Q. What office, if any, did you hold?

A. Recreational Officer.

Q. Did you ever become Mess Officer of that Camp?

A. I was asked to help by Miles and Mahaffey because the mess was running behind.

Q. Did you take over the duties at that time?

A. I assisted Mr. Gibson and I was doing mess work.

Q. I understand Mr. Gibson was quartermaster?

A. Quartermaster, yes.

(Testimony of Lily Shelton.)

Q. But I understand, Mr. Mookini, later on Mr. Gibson's duties were more or less confined just to the regular quartermaster and that you actually took over the duties of Mess Officer?

A. Yes. I did. [111]

Q. When you first took over your duties as Mess Officer where were you purchasing vegetables, fruits, etc.?

A. At first my duties as Quartermaster were split up whereby I was handling the open market purchases. That would take in vegetables and outside purchases. Mr. Gibson was handling all subsistence bought from the Quartermaster at Schofield canned goods and whatever the bakery had to sell.

Q. When you first started in where were you purchasing vegetables?

A. Chun Hoon.

Q. And Chun Hoon has a stall in the Army market there at Schofield Barracks?

A. Yes, he has.

Q. How long did you continue buying there?

A. Right up to April 15th.

Q. And after that where did you purchase?

A. Vegetables bought from Lee Chong Company through commissions of Miles and Cunningham.

Q. What reason was given?

A. Goods from Chun Hoon was seconds and the goods were not up to quality for the amount paid.

Q. How were they with reference to price?

(Testimony of Lily Shelton.)

A. Sometimes even, sometimes higher, most instances higher. Chun Hoon's prices were higher.

Q. And you kept a fairly good check on those prices, Mr. Mookini?

A. Yes.

Q. And you would say that over the period of time when you were buying from Lee Chong, as compared to the prices paid to Lee Chong they were less than those paid to Chun Hoon?

A. Yes.

Q. Now, you recall that out there at the Conservation Camp during the month of May that you had a special dinner or something of an affair for Mother's Day?

A. Yes.

Q. And on that particular day, I believe it was May 12th, a voucher was sent out by Lee Chong for various goods delivered. First I will show you a photostat copy of a purported voucher from the Lee Chong Company dated May 12th for the CCC Camp at Schofield Barracks. I call your attention to the initials down at the bottom of the line where it says "Receievd the above articles"?

A. Cunningham's.

Q. What is the purpose for initialing that?

A. That he has actually received the goods?

Q. The goods listed on this voucher?

A. Yes. [112]

Q. Under the same date I show you another voucher which is somewhat similar to the one which

(Testimony of Lily Shelton.)

I just have shown you, only there are some discrepancies. Whose signature is this?

A. Mine.

Q. And how did you hapen to receipt for those?

A. Three days after the goods were delivered. This was the original. I wasn't there when the goods arrived. This line here represents that the goods had to be changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing he had been to make the change I came in to have it done. This bill was given to me and Cunningham said that the Captain wanted to have it changed, so I compared the amounts and signed the second one as a matter or record for the files out there.

Q. Did you have anything to do with the changing of these?

A. No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess Funds.

Q. Nevertheless you signed this bill as receiving these particular things?

A. Yes.

Q. And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?

A. I can't say that they were not true and correct. The amount seemed to be the same. I didn't check it thoroughly.

(Testimony of Lily Shelton.)

Q. You just told us that there were a lot of things, paper cups and plates, on this other voucher which could not be charged to the Mess Funds and you informed Mr. Miles of this, and because of that this thing was changed?

A. Yes. Mr. Cunningham informed me that the Captain sent him down to have it changed.

Q. And when you knew the voucher came out you knew that it had been changed?

A. Yes.

Q. You knew that the items had been changed?

A. Yes.

Q. And you knew there were items put on there which were not actually delivered so as to cover up the amounts of the paper plates, etc.?

A. I knew the paper plates were; the others were changed to vegetables to put the voucher through.

Q. You knew that these particular items in toto were not true and correct?

A. Not according to the original bill. [113]

Q. You knew in fact they were not correct, didn't you?

A. Yes.

Q. Now, do you know anything about these? Here's a voucher I show you under date of September 1, 1934. These initials down here in the line where it says "Received the above articles", those were Cunningham's initials?

A. Yes.

Q. And here's another one dated the same thing?

A. Yes.

(Testimony of Lily Shelton.)

Q. And you will notice that upon this—that is, the one which is receipted for by Cunningham and the one that was presented for actual payment—do not conform. Calling to your attention the particular things: You see there is 50 pounds of California yams and over here it is 25. And down here there are honey dew melons, pumpkin, dried mushrooms, etc. Those don't appear on here. Do you know anything about these?

A. There is another bill on these. It runs to about $72.50, I think.

Q. That is this bill here?

A. Yes, $72.50, correct.

Q. In other words, in this bill here that is presented, which is $526.60, there's concealed in amongst those items this for kiawe wood, chicken wire, Hawaiian pudding, chairs, etc?

A. Yes.

Q. Did you know that that was put in there to cover up?

A. I instructed him to make two bills. On May 16th Mr. Lloyd came down and took us over the coals for buying stuff which was like oysters and that stuff so I, before this luau came up—the Camp was supposed to expire about September 6th—about the middle of August Miles thought it would be a good idea to put on a luau for the boys out there because in the Mess Fund at that time there was money saved from the rations, so he told me to go down and price materials which would be

(Testimony of Lily Shelton.)

used for the luau out there. So in the meantime we were having several meetings, Miles, Cunningham and myself, around the office, some of the boys were there, and even then I appraised them of the fact that we couldn't buy anything out of subsistence funds that was not food. So he authorized me to go ahead. The first estimate submitted to Miles was about $800 which was ridiculous. In getting other figures it was reduced to six hundred and some odd dollars. He said to go ahead. So before September 1 I went down to make the arrangements, bought all the stuff, told them to send it out and to make two bills, one for subsistence and the other for extras which could be paid out of the Canteen Fund. So when he had the goods hauled out Cunningham went out with them. I was up town. Along about September 13 I happened to be called in to Mr. Lloyd's office, not knowing that an investigation was under way. So Mr. Lloyd called me in and asked me about it. I explained it. I told Mr. Lloyd to go out to the Camp and find vouchers for September 1 where the regulation had been violated. He went out there and grabbed this voucher and I showed it to him. He said it was with the full knowledge of the Camp Director which he was trying to blame me for. [114]

Q. Then these bills that I have shown you already and even others which have been presented out there about which we are not especially talking about now, any items which appeared on there which

(Testimony of Lily Shelton.)

were not actually delivered and which were put on there for the purpose of covering up purchases that could not be taken out of Mess Funds, anything done with those was with the knowledge of Mr. Miles?

A. Yes.

Q. And with his consent?

A. With that we went out and bought the stuff.

Q. Did he direct you to go out and buy it that way?

A. He told us to go out and buy it. He didn't say how to charge it.

Q. Did he ever give you any directions after charging it to cover up?

A. He said to. I told him to keep a detailed account.

Q. But you knew as a fact that vouchers actually went through for presentment and payment that were actually paid that had cover up items in them? I'll put it this way, then. You knew that there had been vouchers similar to the ones that you have seen here presented to the Camp Director for payment which were not true and correct in that they were, as we say in the common acceptation of things—"padded" to cover up things which were not legitimately Mess?

A. Those are the only two.

Q. Now, Mr. Mookini, as Mess Officer you used to come down town and call upon Lee Chong with reference to the goods which were to be purchased and delivered?

(Testimony of Lily Shelton.)

A. Not all the time. When I came to town I stopped there but the goods were already ordered by telephone. I would stop in and buy things for my own home too.

Q. You were buying things for your own home?

A. Yes.

Q. And how long had you been buying there?

A. Latter part of July and August of last year.

Q. Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?

A. At that time I was buying because my wife was in the hospital.

Q. But before you never bought there before?

A. I bought there because I was broke and he offered me the credit.

Q. Did you pay for these things?

A. Yes.

Q. Do you owe him anything now?

A. About $50, since about last August, for goods I bought about that time. [115]

Q. Did you get any liquor to take out there?

A. I bought my own liquor.

Q. And Lee Chong never delivered any liquor out there for you?

A. No.

Q. There is an item on that voucher under date of May 12th, 1934, of 500 fresh oysters. Do you know whether or not those oysters were ever delivered?

(Testimony of Lily Shelton.)

A. It was for flowers, that's what I was informed of the change of that voucher.

Q. Our information, Mr. Mookini, is that those 500 oysters were for a case of liquor which came out there and was delivered into the kitchen, stayed there possibly a half hour or more, and then by one of the assistant cooks was taken to your quarters?

A. I don't think it is the truth.

Q. Was there a case of liquor ever delivered to your quarters?

A. I bought my own.

Q. Did you bring it out there yourself?

A. I brought it out there in my own car and in several instances on the bus too.

Q. Did you ever get a case consisting of three or four bottles of ordinary gin, a couple of bottles of sloe gin, and a couple of bottles whisky?

A. No. The gin I brought out there was Gordon Dry—and the last time I brought it out there I brought it to the luau from the Pacific Brewing.

Q. Did you ever pay for that liquor?

A. I have a bill for it. I haven't worked for five months. I just started working for the Legislature during the last three weeks.

Q. Now, this bill of May 12th—it was flowers delivered out there for Mother's Day?

A. Yes.

Q Were there any cigars or cigarettes?

A. Not at that time.

Q. Well, is there anything listed on that bill to cover cigarettes?

(Testimony of Lily Shelton.)

A. No; not at that time. I don't remember any such coming out there at that time.

Q. How much was this flower bill?

A. That I can't tell offhand, because it was close to Mother's Day flowers were pretty high at that time.

Q. Wasn't there a collection taken up out there at the Camp for the purpose of buying flowers for Mother's Day?

A. No.

Q. Was any collection ever taken for that?

A. There was a collection for a wreath for the boy who died June 26, 1934.

Q. And the purchase was made at Kilsby's?

A. Yes. [116]

Q. How much?

A. $19.

Q. Was it paid for?

A. Yes.

Q. Who paid it?

A. I did.

Q. How long after it was ordered?

A. A couple of months because they didn't get it paid to me. . . . A wreath for the officers; he said you incur the bill and we will pay you afterwards. I didn't get it. I'm still out $7.50 at Fujikami's.

Q. What about this watch?

A. I can explain that. Just before the Camp ended Cunningham came over and told me. He says, Bob, what do you think about giving Captain Miles

(Testimony of Lily Shelton.)

a gift? I said that was a good idea; what do you think we should give him? He said, Well, he might use a knife or a finger nail clipper, something fitting to show he had been at the Camp. I said all right. So we went out there and mentioned it to several of the staff out there and so we wanted to get a watch because Miles' watch wasn't working properly. So I started out to Davies to find a good watch at a nominal price. Couldn't find one. I couldn't get the discount I wanted.

Q. What were you going to do with the discount?

A. Was going to get the watch cheaper. Finally I went over to Marques, he had an Elgin there which was not so good. Then I went to Schwartz. In the meantime I couldn't get it from Schwartz outright without paying fifty or sixty dollars for it. So I told him about the watch over there and wanted to know how we could get it. He said we couldn't get any discount from Schwartz but if we could get someone to guarantee the payment he could give us a discount besides the 25% he could get out of Schwartz. Being there was a Hamilton watch, I got hold of Lee Chong. I told him we could buy stuff from Schwartz & Company through Benny but that they can give concerns a discount. I said if he would guarantee, that we would sign notes, those who had been chipping in, and pay him back on pay day, proportionately it would make our shares fourteen or fifteen. All told, I think the watch without the chain and the knife came to about $60 so the watch

(Testimony of Lily Shelton.)

was delivered. Benny wanted to be assured. I told him to call up Lee Chong. On the morning of the first I called for the watch and presented it to Miles knowing full well that it was a gift and that we in turn were going to pay for it. While Miles took the watch, much to my surprise he invited me to a luau in Kaimuki I didn't see the watch on him, until I was called in by Mr. Lloyd and asked to explain. I told him I was formerly employed with the Consolidated; I could buy things through the Consolidated and I paid them the net amount after the discount had been allowed through the Consolidated. For an automobile radio of $45 I got it for $21 through the Consolidated. That is, why I wanted to go through a concern and get the cheap price.

Q. Did you collect any money among the men for this watch?

A. Not yet; the watch has been turned back and therefore we don't have to pay for it. [117]

Mr. MOORE: Miss Shelton, you were present in the Grand Jury room, were you not, during the entire testimony of Mr. Mookini?

A. I was.

Q. And thereafter, when other witnesses were present?

A. Yes.

Q. Was there anything in any way said or done to curtail Mr. Mookini on whatever statements he wished to make before the Grand Jury?

Mr. ULRICH: Just a moment. I think I'll have to object to that as asking for the conclusion of this

(Testimony of Lily Shelton.)

witness. Let the witness say what was said or done, and let the jury draw its own conclusions as to whether he was curtailed in telling his story.

The COURT: The objection is sustained; it does call for the conclusion of the witness.

Mr. MOORE: Miss Shelton, was there anything said during that testimony that you took down, by myself, that is not recorded in this exhibit?

A. No sir.

Mr. MOORE: That's all. That is, referring to United States Exhibit "O". [818]

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Miss Shelton, I believe you said you have been with the United States Attorney's office for a good many years; how many years?

A. Not with the United States Attorney's office, Mr. Ulrich; I have only been there since last September; I have been with the firms of Huber, Kemp & Stainback, Kemp & Stainback, and Huber & Kemp.

Q. That's since you were in Mr. Stainback's office; in other words, before he came over to be United States Attorney?

A. Yes.

Q. You were his stenographer down in the office of Kemp & Stainback?

A. His, and Judge Kemp's, and Judge Huber's when he was there.

(Testimony of Lily Shelton.)

Q. Have you ever been a court reporter?

A. No sir; I have only taken court testimony once before; that was in the Circuit Court some four or five years ago, I believe, during the contest of the Matsumoto will.

Q. And was this the first time you had taken proceedings of a grand jury?

A. Yes sir.

Q. What system do you use?

A. Gregg.

Q. Do I understand, Miss Shelton, that there was nothing at all said except what was put down here while you were in there from the time they started to examine Mr. Mookini until they finished?

Mr. MOORE: That isn't the statement. [819]

Mr. ULRICH: Let me just find out what it was;——

Mr. MOORE: Well, to state something that was not said is improper. What was said with reference to that is, that there was nothing said by myself during the examination of Mr. Mookini that was not recorded. Now you're putting the whole grand jury in there, and there were 23 of them.

Mr. ULRICH: Well, I'll withdraw the question. I didn't say "by anyone."

Q. Do I understand, Miss Shelton—I am going to ask you the question whether you took down everything that was said by everybody?

A. I think I took down everything that was said by Mr. Moore and Mr. Mookini.

(Testimony of Lily Shelton.)

Q. You know, if you've taken testimony, that there are times when people will stop and carry on a conversation which is not recorded, and then go on again; nothing like that happened?

A. In such a case I think the stenographer is generally told that "This is off the record" and she does not take it.

Q. You don't recall anything like that?

A. No.

Q. Let me ask you to turn to that part of your notes—there's a certain place where you find a question and answer something like this; this is on page 2 of the transcription,——

Mr. MOORE: She read down through that, Mr. Ulrich.

Mr. ULRICH: I know she did; it's part of those you already read; it says, "And did you happen to receipt for those?" That's the question. The answer is rather a long answer; [820] it starts: "Three days after the goods were delivered. This was the original."——

Mr. MOORE: That was just before you stopped reading, Miss Shelton, if that would help you find it.

A. (reading): "And how did you happen to receipt for those?"

Mr. ULRICH: That's right.

A. (reading): "Three days after the goods were delivered. This was the original."——

Q. Let me just see what you have there. May I take this just for a second and show it to Mr.

(Testimony of Lily Shelton.)

McGhee, who knows more about stenography than I do.

A. Surely.

(Mr. Ulrich and Mr. McGhee examine notes.)

Q. We're down at the bottom of your page here: "Came to town to have it done"—do you see that place there, "Not knowing he had"——

A. (reading): "Not knowing he had been to make the change, I came in to have it done. This bill was given"——

Q. Just a moment. What is the character for "done"?

A. "Dn".

Mr. MOORE: Make it on the back of there (indicating).

Mr. ULRICH: What is the character for "it"?

A. (illustrating): "To have it done."

Q. Now, in taking these notes did you have occasion to go over them and review them, or anything like that, at any time?

A. I re-read them yesterday with my transcript to be sure it was a direct transcription. [821]

Q. And the notes otherwise are as you took them at the time?

A. With one exception, the transcription is direct from the notes.

Q. Except what?

A. In this last paragraph——

The COURT: What page are you referring to?

Mr. MOORE: Page 6.

Mr. ULRICH: What was the error?

(Testimony of Lily Shelton.)

A. "Who had been chipping in", instead of "who would be chipping in".

Mr. ULRICH: "Who had been chipping in", instead of "who would be chipping in"?

A. Yes.

Mr. MOORE: That's an error in transcribing?

A. Yes.

Mr. ULRICH: So that, if any error did come in, it would not be in the copying from your notes to the transcription?

A. No.

Mr. ULRICH: Of course we can't reproduce the oral words that were then spoken. I think that's all.

Re-direct Exemanation.

By WILLSON C. MOORE, Esq.

Q. Miss Shelton, as I recall, you went in the Grand Jury room and within two or three hours afterwards that transcription was finished and put on my desk, was it not?

A. It was.

Q. In other words, when you made the transcription it was immediately afterwards?

A. It was.

Mr. MOORE: That's all. [822]

CAPTAIN HERBERT BALDWIN

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Mr. MOORE: The witness has already been sworn, Mr. Clerk.

CLERK: He has, yes.

Mr. MOORE: Captain Baldwin, during the month of October, 1934, did you make a visit to Lee Chong Company's store with Mr. Deville?

A. I did, on the morning of October 16th.

Q. And whom did you see there, if anyone?

A. A man by the name of Roque, and Lee Chong's son.

Q. Did you have any conversation with this man Roque?

A. Yes, Captain Deville had——

Mr. ULRICH: Just a moment. I don't know exactly what this is; of course conversation with other people without the presence of the defendant is not admissible. If it's something as to which a basis has been laid in the testimony of Mr. Roque——

Mr. MOORE: I can assure counsel of that.

Mr. ULRICH: All right.

Mr. MOORE: Did Mr. Roque have anything to say as to what his connection was with that firm?

A. He said he was the assistant manager.

Q. Without going into details, just give us the subject of the conversation.

(Testimony of Captain Herbert Baldwin.)

A. The conversation concerned the padding of Mess bills pertaining to the C. C. C. Camp at Schofield Barracks. [823]

Mr. ULRICH: Now, if Your Honor please, the only thing we can do at this time, at this late stage of the proceedings, is to prove some prior contradictory statements, as I understand,——

Mr. MOORE: That's exactly what we're going to do.

Mr. ULRICH: (continuing): in the matter of impeaching a witness. Asking the witness generally to relate a conversation and opening up another field on which I may have to cross-examine, I believe is improper. "Did you or did you not say something", or "Did Mr. Roque say something" which has already been called to Mr. Roque's attention, and then get the prior contradictory statement from that witness, not the rest of the conversation.

Mr. MOORE: We're going to do just exactly what Mr. Ulrich says, we're going to show prior inconsistent statements.

Mr. ULRICH: Well, I object to the form of the question. He says "What was said, state so and so"; he has Mr. Roque's testimony.

Mr. MOORE: I'll withdraw the question.

Mr. ULRICH: All right.

Mr. MOORE: Showing you United States Exhibit "D"; have you ever seen that before?

A. Yes sir, I have.

(Testimony of Captain Herbert Baldwin.)

Q. Where did you first see it?

A. In the office of Lee Chong and Company. It was presented to Captain Deville and myself by Mr. Roque.

Q. On what day?

A. On October 16, 1934.

Q. On this particular bill were there any things called off as being padded, or things not delivered to the Civilian Conservation Camp? [824]

A. There was 500 only fresh oysters——

Q. Wait a minute; let me have that (exhibit). Have you any individual recollection of what was called off?

A. I have, because I made a note at that time.

Q. When these were called off what did Mr. Deville do, if anything?

A. He wrote them down on a piece of paper, and in addition he marked that bill there.

Q. What items did Mr. Roque call off at that time as being items that were not delivered to the Civilian Conservation Camp that were listed upon this voucher?

A. 500 oysters, 400 pounds of spinach, 400 pounds pumpkin, 400 pounds of squash, and 40 pounds of fresh lima beans.

Q. Anything else you recall?

A. And I believe there was the question of apples; the item of apples was raised from 2 cases to 6 cases.

(Testimony of Captain Herbert Baldwin.)

Q. Now, were there any other vouchers there at that time with reference to this same date that were different?

A. There were quite a number of various vouchers there which Mr. Roque showed Captain Deville and myself, and I believe there was another voucher of the same date which had some items on it that had been scratched out or attempted to scratch out, which was purposted to be one of the bills that were submitted as of that date.

Q. I show you United States Exhibit "B", and ask you if you have ever seen that before?

A. Yes sir; this was supposed to be the original voucher as submitted which was requested to be changed.

Q. Was there anything said by Mr. Roque as to who made the [825] request for the changing of United States Exhibit "B", this one voucher with the lines through it?

A. Mr. Mookini and Mr. Cunningham.

Q. Who said "Mr. Mookini and Mr. Cunningham"?

A. Mr. Roque.

Q. Was there anything said at that time about September 1st vouchers?

A. Yes sir, there was;——

Q. Wait a minute, don't tell me what was said. Have you seen that voucher before, showing you United States Exhibit "B"?

A. Yes sir.

(Testimony of Captain Herbert Baldwin.)

Q. Where did you first see that?

A. I saw that in Lee Chong's office; Mr. Roque had this out there.

Q. Was there anything said about this particular voucher?

A. Yes sir, there were a number of items which had been changed at the request of Mr. Mookini and Mr. Cunningham.

Q. Who said that it was the request of Mookini and of Cunningham?

A. Mr. Roque; he seemed very familiar with everything that took place in there.

Q. Was there any books there in which these various vouchers were listed?

A. Yes, there was; there was a small cloth bound book which Captain Deville had and in which was written in these various items which purposted to represent the various bills that had been submitted to the Camp Director at Schofield Barracks covering the items delivered there.

Q. Did you check any of them? [826]

A. Those bills were checked against that book——

Mr. ULRICH: Is this as to prior contradictory statements?

Mr. MOORE: Prior contradictory statements; Mr. Roque testified that there was a book kept.

Mr. ULRICH: He said nothing of the kind: he said he kept certain memoranda kept by the Chinese bookkeeper.

(Testimony of Captain Herbert Baldwin.)

Mr. MOORE: (argument).

Mr. ULRICH: (argument).

The COURT: The Court does not pretend to recall better than the record, but the Court's recollection is that this witness did testify that there was no account kept of the goods delivered to the C. C. C. Camp.

Mr. ULRICH: I'm afraid I'll have to call him again if there's that misunderstanding, Your Honor; because he kept his own memoranda—I thought he said no; in fact, some of them are in evidence in the record right now.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Baldwin, what was it that Mr. Roque read off to you, do you remember now what he said to you as to the things that were on that first bill that shouldn't have been on there?

A. 500 oysters, 400 pounds pumpkin, 400 pounds spinach, 400 pounds squash, and 40 pounds fresh lima beans.

Q. What have you been doing—memorizing this thing, Captain?

A. I am telling the truth.

Q. I say, it's rather extraordinary a thing that you should come in here all these months later and remember item for item what he read off to you.

[827]

A. I have a memorandum in my pocket that I made at that time.

(Testimony of Captain Herbert Baldwin.)

Q. And you have refreshed your recollection from that memorandum?

A. I have that memorandum here.

Q. I see. How did it happen that Mr. Roque specified Mr. Mookini and Mr. Cunningham as the ones who had directed those changes?

A. Because when Captain Deville went there and asked these questions he told Mr. Roque at that time that he did not have to answer these questions, and he asked him who it was that asked that this be changed, and he said "Mookini and Cunningham".

Q. He said "Mookini," you're very sure about that?

A. And "Cunningham."

Q. And you're quite sure that he took only the one paper when he read these things off, and didn't refer to another paper? Of course you know it would have been easy enough to take the items of the bill and check one against the other; but he performed the same feat you're performing now, that is, he took the paper without any figures and read them off?

A. No, no, he had a cloth bound book which had these items in it.

Q. And he checked it back and forth?

A. And that book was removed by Captain Deville and later given back to Lee Chong, and that book had these items in which are under dispute; and there was one bill already rendered which had

(Testimony of Captain Herbert Baldwin.)

all these items scratched out, paper napkins and things of that sort; and we asked him to [828] explain that, and he said that bill was taken back and changed to this present bill with oysters and so forth, at the request of Mookini and Cunningham.

Q. And, so far as reading these things off, he didn't really take it off one bill, he did it by consulting his records?

A. He did it by looking at his records, and pulled those bills out.

Mr. ULRICH: That's all.

Mr. MOORE: That's all, Captain.

(Recess—11:00 to 11:05 a. m.)

HARRY M. COLMAN

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Have you ever been down to Lee Chong's with Mookini?

A. Yes.

Q. On how many occasions?

A. I don't know exactly; half a dozen, at least.

Q. Ever have any drinks down there?

A. Yes.

Q. Who furnished the drinks?

(Testimony of Harry M. Colman.)

A. Well, several times I have come down there and found liquor on the table when I come down there, and at least two occasions when there wasn't any more liquor left Lee Chong went out and came back with a bottle.

Q. Lee Chong went out, and brought the bottle back himself?

A. Yes.

Q. Any of these fellows drinking there pay for it?

A. No; I never have. [829]

Q. Ever seen anybody else?

A. No.

Mr. MOORE: That's all.

Cross Examination

By BARRY S. ULRICH, Esq.

Q. When he went out to get this liquor and brought it back, what kind of liquor was it?

A. He brought back a bottle of Black Label once, I remember.

Q. You don't know where he got it from?

A. No, I don't know where he got it.

Mr. MOORE: "Black Label", that's Scotch, isn't it?

A. I believe so, yes.

Q. What?

A. I believe it's Scotch whiskey.

(Testimony of Harry M. Colman.)

Mr. ULRICH: Did you ever have any drinks with Mr. Mookini there?

A. Yes.

Q. Whose liquor was it?

A. I don't know whose liquor it was.

Q. You don't know where it came from?

A. No, I don't believe I do; I couldn't say that I saw it taken from any particular place.

Q. Well, would you want to say that it was not Mookini's own liquor; would you know that it wasn't his liquor?

A. I have never heard anybody say whose liquor it was; I simply saw it on the table. On these two occasions I saw Lee Chong go out, and come back with a bottle in his hand.

Q. And, so far as the liquor was concerned, was Mookini there on these two occasions?

A. Yes. [830]

Q. You don't recall being out anywhere with Mookini at any time and Mookini buying any liquor?

A. Certainly I did, I remember occasions when Mookini bought liquor.

Q. I thought you said you didn't know where it was from?

A. I thought you were speaking about Lee Chong Company.

Q. I am talking about Mookini getting liquor and taking it over there to drink.

(Testimony of Harry M. Colman.)

Mr. MOORE: May it please the Court, I object to that as not proper cross-examination, because there is no testimony on direct that Mookini got any liquor and took it over there; that's an absolute mistake in the evidence.

Mr. ULRICH: There was evidence, as I understand it, Your Honor, that Mookini was out with this fellow somewhere and that they got a bottle of gin or something of that sort and went over to Lee Chong's and Lee Chong furnished the ice water, or whatever it was.

Mr. MOORE: (argument).

Mr. ULRICH: (argument).

Mr. MOORE: As long as you make your questions clear, I have no objection to your asking him anything you want.

Mr. ULRICH: Is there anything difficult about this question:

Q. Were you out with Mookini at any time when he bought liquor?

A. I couldn't understand at that time whether you were speaking of the occasion at Lee Chong's or any occasion at all.

Q. I am just talking of any occasion when you and Mookini were together and he bought liquor and went over to Lee Chong's and drank it? [831]

A. I don't remember of any occasion.

Q. You don't remember anything of that kind at all?

A. No.

(Testimony of Harry M. Colman.)

Q. You don't know where that whiskey, or whatever it was, came from, that Lee Chong bought in there; do you know how far away he went to get it, or anything?

A. No, but he came back in a few minutes.

Q. Did you ever hear anybody tell him that they had liquor in a certain part of the store and to bring it over?

A. No, I don't believe so.

Q. You had heard somebody ask Lee Chong for liquor when he went out and bought his own liquor?

A. I don't remember hearing anyone to ask Lee Chong to buy any liquor; I remember him getting up voluntarily and going out and getting some.

Q. That is, when there was no liquor there, he went out and got some?

A. When there wasn't any liquor left.

Q. When it was gone, he went out and got some more?

A. Yes.

Q. Nobody said anything to him about it, or told him where to get it, or anything of the kind?

A. They may have, but I don't remember anything of that kind.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

HARRY L. KIM

was duly called and sworn as a witness for the Plaintiff, and testified as follows: [832]

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Harry L. Kim.

Q. Do you know Mr. Mookini?

A. Yes.

Q. Do you remember during the month of June that there was a funeral in here for one of the boys that was a member of the Civilian Conservation Camp?

A. I do.

Q. Were you in town on that day?

A. Yes.

Q. And whom were you with?

A. Mr. Mookini.

Q. Do you know Mr. Lee Chong?

A. Yes.

Q. Do you know where his store is?

A. Yes.

Q. Did you call at Mr. Lee Chong's store with Mr. Mookini on that day?

A. Yes.

Q. And what did he do there, if anything?

A. Well, we went down there, and Mr. Mookini went in; he had a talk with Lee Chong; I don't know what they talked about; but after that we all went in; there was two other fellows, besides

(Testimony of Harry L. Kim.)

myself, there was three of us, and we all went in the store, and after we went in the store there, we walked in and Mr. Mookini walked in the little office there with Mr. Lee Chong, and we all went in there, and then Mr. Lee Chong went out, and he came back with a quart of whiskey.

Q. When you say "he went out", what do you mean, where did he go out of?

A. He went out of his store.

Q. Did you see where he went out of the store?

[833]

A. No. The office is right in front of the store; he walked out, I don't know where he went.

Q. Was it on the street, did he go out as far as the street, or not?

A. No, I don't know.

Q. You're sure you saw him go out?

A. Yes.

Q. And he came back with a bottle of whiskey?

A. Yes.

Q. When the whiskey was brought back what did he do?

A. When the glasses were placed on the table and the drinks were served out, we all sat down and drank. There was some White Rock brought in, too, right after that.

Q. Two bottles of White Rock?

A. Yes.

Mr. MOORE: That's all.

(Testimony of Harry L. Kim.)

Cross Examination

By BARRY S. ULRICH, Esq.

Q. When Mr. Lee Chong went out, where did you say he went—down the street, or something, outside the store?

A. He just went; I don't know whether he went up or down.

Q. Just out of the office; there are stores around there, aren't there?

A. Yes.

Q. You don't know where he went, except he went outside of the office?

A. Yes.

Q. And came back with this whiskey?

A. Yes.

Q. You don't know what this whiskey was, or where he got it?

A. No.

The COURT: Just one question. Who did you say was with you and Mookini at that time? [834]

A. There were two other enrollees.

Q. When you speak of "enrollees", what do you mean—members of the C. C. C. Camp?

A. Yes.

Q. You were a member of the C. C. C. Camp at that time?

A. Yes.

The COURT: That's all.

FRANK D. GIBSON

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified as follows:

Direct Examination

By WILLSON C. MOORE, Esq.

Mr. MOORE: Mr. Gibson, you have been already sworn in this case?

A. Yes.

Q. Out at the Civilian Conservation Camp who had charge of policing the Camp?

A. Mr. Mookini and, later, myself.

Q. When did you take over the policing of the Camp, to the best of your recollection?

A. Shortly after he took over the Mess, I believe.

Q. What's that?

A. I believe, shortly after he took over the Mess.

Q. Shortly after Mr. Mookini took over the Mess, you took over the policing of the Camp?

A. Yes.

Q. Do you know Mr. Lee Chong?

A. Oh yes.

Q. Do you know where his store is down town?

A. I do.

Q. Ever been there with Mr. Mookini?

A. Yes. [835]

Q. Ever have any drinks there?

A. Yes.

Q. On how many occasions?

A. One occasion.

Q. When was that, to the best of your recollection?

(Testimony of Frank D. Gibson.)

A. Either the latter part of May or the first part of June; as to the date, I don't know.

Q. Just tell us what happened in the store, that is, with reference to the drinks themselves.

A. Mr. Mookini and I were in town one day on some business, and we picked up Mr. Hoopii, and we went to Lee Chong's, and talked a while; there was some discussion about a chop suey dinner that was to be given——

Q. Never mind the discussion; just confine ourselves to the drinks.

A. Something was mentioned about a drink, and then a bottle was produced.

Q. Who produced the bottle?

A. I believe, Lee Chong.

Q. That's this defendant here (indicating)?

A. I believe so.

Q. Do you know where he got it?

A. No sir.

Q. This man that you speak of—Hoopii—he is an employee of the E. C. W. over here at the Capitol, isn't he?

A. Yes sir.

Mr. MOORE: That's all.

Cross-Examination

By BARRY S. ULRICH, Esq.

Q. Do I understand that you now recall this thing so definitely that you know how that bottle was produced, [836] how it appeared at that par-

(Testimony of Frank D. Gibson.)

ticular moment; did you carry that picture in your mind, now did you, Mr. Gibson?

A. Yes, because it's the only time I was there.

Q. So that you remember quite distinctly what happened when the liquor appeared, do you?

A. I do.

Q. And what was his—how did Lee Chong behave himself when he produced that bottle of liquor?

A. I don't know how he appeared.

Q. What did he do; what makes you remember particularly Lee Chong producing this bottle of liquor; are you quite sure it didn't come from Mr. Mookini?

A. No sir, not that I know of.

Q. You're not sure, or are you; have you a very distinct recollection?

A. Yes, I have.

Q. And Mr. Mookini didn't have any liquor of his own at all?

A. Nothing, sir, because I was with him.

Q. Were you watching him carefully to see that he didn't pop a bottle on you there?

A. He couldn't pull a bottle on me without me knowing it.

Q. And he didn't, you're quite sure?

A. No sir.

Q. So it was Lee Chong that produced the liquor?

A. Yes sir.

Q. You don't know where he got it?

A. No, I don't; it was Filipino gin.

(Testimony of Frank D. Gibson.)

Q. Did he tell you that it was his liquor—Lee Chong?

A. No sir.

Mr. ULRICH: Then you drank, and everything was fine. That's all. [837]

Mr. MOORE: Now, may it please the Court, as Your Honor has seen I have had a number of witnesses here this morning, and I have a very short amount of rebuttal yet to put on, and it can be put on in a short while, but I of course can't foresee events and I'm not prepared at this time to put on the balance of them; I am confident, Your Honor, I have gone as far as I can and within an hour on Monday that the balance of the testimony will be in.

Mr. ULRICH: If Your Honor pleases, if there's any considerable part of the hour to be used I'd like that it be used now as far as possible, and then we can argue the case on Monday.

The COURT: Have you any witnesses within call that could be used at this time, Mr. Moore?

Mr. MOORE: I have Mr. Deville within call, Your Honor. There are two or three things in my mind at this time that I could question Mr. Deville about, but, I have not gone over the entire testimony to check it; in other words, it would be a piecemeal proposition, and I feel that bringing on testimony now would be more or less like groping, while if I had an opportunity to check these particular things they can be put on in just about one-third of the time, Your Honor; so that it's an attempt to ex-

pedite things that I say this, Your Honor; it isn't for the purpose of delaying or anything of that kind.

Mr. ULRICH: It's pretty much of a groping procedure, whatever he says, so far as that's concerned; but Mr. Deville is here, and I submit——

Mr. MOORE: May it please the Court, could we have the [838] statement of Mr. Ulrich, as to his facetious remark with reference to the "groping", stricken from the record and ask the jury to disregard it, and ask Mr. Ulrich that such remarks have no place in a Court of law.

Mr. ULRICH: I consent that it may be stricken. But, seriously, if Your Honor please, I think that Mr. Moore and Mr. Deville have been in constant contact here ever since the trial started, and if they haven't gotten the thing straightened out by this time I don't think they will be in any better shape by Monday morning. I want to finish the trial, and I think everybody else does, and if anything can be done——

The COURT: Yes; I had very much hoped we could take up the trial of another case by Monday, but that seems impossible. You're through with Mr. Gibson?

Mr. MOORE: Yes, Your Honor.

The COURT: You'll be excused, Mr. Gibson. Let us proceed as far as we can with Mr. Deville.

Mr. MOORE: Very well. Mr. Deville, will you take the stand.

CHARLES I. DEVILLE

being recalled as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Mr. Deville, you know this boy Hutchinson that testified here on the stand?

A. I do.

Q. Did you have a conference with him over at Kaneohe some time last year?

A. I did. [839]

Q. When was that, to the best of your recollection?

A. It was on a Friday afternoon, I believe, about October 18th.

Q. And did you talk to him?

A. I did.

Q. Did you question him about any box being on the truck of Lee Chong's when it made the May 12th delivery for the Civilian Conservation Camp?

A. I did.

Q. And what did he have to say in that regard?

A. He stated on this particular occasion that there was a box on the truck for Mr. Mookini.

Q. For Mr. Mookini?

A. Yes.

Q. Did you talk to him again the next morning?

A. I did; the following morning, Saturday, I took a sworn statement from him.

(Testimony of Charles I. Deville.)

Q. And what did he have to say, if anything, with reference to his prior statement at Kaneohe?

A. He stated at the time he made this morning statement that there was no box on the truck for Mr. Mookini, and he denied having made that statement to me the previous day that there was a box.

Q. And, Mr. Deville, you made notes of these conversations, did you?

A. I took it right on the typewriter; I asked him the questions and took his answers right on the typewriter.

Q. Did you particularly question him on the second occasion about this box?

A. I did.

Q. Now, Mr. Deville, I don't recall certain parts of your [840] direct examination. Taking you back to Lee Chong's store when you questioned Mr. Roque in the absence of Mr. Lee Chong; what did Mr. Roque have to say, if anything, as to who directed the changes in the original vouchers covering the September 1st and May 12th deliveries?

A. This conversation with Roque took place on the morning of October 16th, in the presence of Captain Baldwin and Lee Chong's son, and at that time Roque stated to me that the changes were made at the request of Mookini and Cunningham.

Q. And at that time, Mr. Deville, were the items called off to you as to which articles were not delivered?

A. They were.

(Testimony of Charles I. Deville.)

Q. And who called them off?

A. Roque.

Q. And when and as he called them off, what did you do, if anything?

A. I had the original of the changed May 12th invoice in front of me and put an arrow mark before each item as he called them off; he pointed them out to me.

Q. Showing you United States Exhibit "D", is this the voucher to which you refer?

A. It is.

Q. And these (indicating) are the arrow marks that appear on the side?

A. They are.

Q. How about this circle in here with the number "2" in it?

A. Where it says "6 cases red apples" I put a circle there with a "2" inside.

Q. And that was done as Roque called these off?

A. It was. He saw me do it. [841]

Q. Now, with reference to the September 1st voucher, did he call any items off of that?

A. Henry Lee entered into the conversation at this time, because Henry Lee was in the store on September 1st or prior to that; he wasn't there on May 12th, he was going to school; and Roque explained that items amounting to $76.20—I made a note of it at the time—had been delivered to the Camp and had been included in the September 1st voucher as other items, and that later, that a sepa-

(Testimony of Charles I. Deville.)

rate bill was made out for the items amounting to $72.50; he did not explain the discrepancy.

Q. Did he call off the items, or not?

A. Yes, he did, he pointed them out to me.

Q. And what did you do, if anything, as he pointed them out to you?

A. I made a mark on there; I can't say whether it's a line or an "X"; I marked the items.

Mr. ULRICH: Just to understand what's going on here; I don't understand that this is in denial of anything that Mr. Roque testified to; if it is, I'd like to have indicated what the difference is. Mr. Roque's testimony, as I understood it, was that he did not call it off of one sheet, that he had to consult his book or something of that kind to tell him what the changes had been; but I don't understand that he denied informing him of what the items had been.

Mr. MOORE: His direct denial, as I understand it, was that he did not call these items off to Mr. Deville in the presence of Captain Baldwin. That's my recollection of the testimony. [842]

Mr. ULRICH: Well, if that's what you have in mind, I think the question is simply whether Captain Baldwin was there or not, without re-examining him as to the whole conversation. Oh go ahead; it will be quicker.

Mr. MOORE: Will you answer that question?

A. What was the question?

Q. What mark did you make, if you know?

(Testimony of Charles I. Deville.)

A. I just made a mark on the original voucher.

Q. Mr. Deville, do you recall any conversation with Mr. Mookini wherein the question arose as to when he started his charge account?

A. I do.

Q. And where did that conversation take place?

A. It took place in the office of the Assistant United States Attorney.

Q. That's myself?

A. That's correct.

Q. When?

A. As well as I recall, it was the early part of November of 1934.

Q. And who was present?

A. Mr. McGhee, Mr. Mookini, yourself, and myself.

Q. And what was said with reference to the time this charge account was opened?

A. Mr. Mookini said at that time that he first started the charge account at the Lee Chong Company in July of last year, and that the reason he started it was because his wife was in the hospital and he was a little short of money.

Mr. MOORE: That's all, may it please the Court, of this witness at this time. [843]

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Deville, as I understand, this Hutchinson boy on the first occasion when you saw him told you

(Testimony of Charles I. Deville.)

quite definitely that there was a box on that load, is that right?

A. That's correct.

Q. Well, of course we know and he's already told us that there were many boxes on the load, but more than that he told you that this box was a box for Mookini?

A. That's correct.

Q. You didn't suggest that idea to him at all, I suppose, did you?

A. Well, the conversation with him was verbal and, as I recall it, I asked him whether or not there there was such a box, it's true.

Q. Then, after he thought it over and you came back next day, he said no, that there wasn't such a box?

A. That's correct, he denied making such a statement.

Q. And he said he hadn't said that before?

A. Yes, correct.

Q. And the sum and substance of your examination and re-examination of Mr. Hutchinson was that he denied that there was any box on the truck for Mookini, is that right?

A. That's the sum and substance of his statement with reference to the box.

Q. In other words, he got it the first time as you had suggested and got this box idea, and then he denied it as soon as you tried to get it into writing, is that correct? [844]

(Testimony of Charles I. Deville.)

A. That's correct; he came in town that night; I brought him in.

Q. Now, so far as Roque is concerned, what he did was to read off these figures to you, that's right, is it—I mean, these items that had been changed?

A. When I say that, he pointed them out to me.

Q. And Captain Baldwin was there at the time?

A. That's correct.

Q. And it was your impression that Roque had denied that Captain Baldwin was there?

A. No; it's my impression that Roque denied stating that the item of pumpkin was among the items that he said were not delivered, and, further, that he denied making the statement that Mookini and Cunningham had requested the changes.

Q. The other conversation was with Mr. Mookini in the United States Attorney's office, and there Mookini told you that this charge account was started in July?

A. Among other things.

Q. Was there any particular discussion of exactly the month that it was started, or how close to the time when his wife was in the hospital or came out of the hospital?

A. Yes, I asked him first about the charge account.

Q. Had you been through the book and discovered when his charge account had actually started?

(Testimony of Charles I. Deville.)

A. I saw it entered in Lee Chong's book, which said he started his charge account in September of last year.

Q. Did you call his attention to that fact, to the mistake about July, that the book showed only September, and ask him what the real situation was?

[845]

A. I don't think that was brought to his attention at that time; I didn't have the book in my possession.

Q. In other words, he didn't do any more than to give you his best recollection from memory without any reference to the charge account; he didn't deny it when he saw it, or anything like that, that he had charged only in September?

A. I didn't show it to him, I didn't have it.

Mr. ULRICH: That's all.

Mr. MOORE: That's all, Mr. Deville.

The COURT: Now, gentlemen of the jury, remember the admonition heretofore given you. While we're all anxious to conclude this case, it has not been the practice of this Court to hold sessions on Saturday, that is, jury cases, except in an emergency; and although we're anxious to conclude this case, at this time the jury will be excused until—how long do you think it will take Monday morning to conclude this evidence, Mr. Moore?

Mr. MOORE: We can conclude it within an hour, easy.

(Testimony of Charles I. Deville.)

(Discussion as to the hour for continuation of the trial on Monday morning)

The COURT: The Court is usually here at 8:00, so if 8:30 is agreeable, we will meet at that hour. The Court will now adjourn until 8:30 Monday morning.

(Adjourned—11:43 a. m.) [846]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 8:35 a. m. on Monday, May 27th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: The defendants stipulate that the jury is present.

The COURT: Let the stipulation be entered. Before beginning the testimony, Mr. Clark will you please hand copy of this to counsel on each side. It's an instruction which the Court has prepared as a possible substitute for Defendants' Offered No. 8. We'll take that up at a later time, but I thought I would hand it to you now so you may consider it as you have opportunity. [847]

WILLIAM E. MILES

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination

By WILLSON C. MOORE, Esq.

Q. While you were Director of the Civilian Conservation Corps, Mr. Miles, whose duty was it to order the goods for the Mess?

A. The Mess Officer.

Q. Did you ever give Mr. Cunningham any directions to order any of the goods?

A. Not at all.

Q. Did your office out there at the Civilian Conservation Corps talk over the parties, as I guess we may call them, of Mothers' Day and September 1st?

A. Yes, we did.

Q. Now, with reference to September 1st, was there any menu or anything drawn up for that ahead of time?

A. There was a list of the articles required or the foodstuffs required for the luau according to Hawaiian fashion.

Q. Do you know who made up that list?

A. We three made it up—Mr. Mookini and myself and Cunningham.

Q. When you had your list finally made up, did you direct anyone in particular to make the purchases?

A. Mr. Mookini.

Q. On that list was the item of keawe wood and those things that we've spoken of, chairs, and burlap

(Testimony of William E. Miles.)

bags, and wire [848] netting, and flowers, and cigarettes, and that stuff?

A. Of course the question of the keawe wood was an essential part of the luau on account of the imu being outside. We talked about the wood, but that was altogether separate from the foodstuffs.

Q. Did you ever direct anyone to charge the keawe wood as vegetables?

A. No, not at all.

Q. Did you have anything to do with the actual ordering of this food for the luau?

A. Actual ordering—placing of the order?

Q. Yes.

A. No.

Q. Every now and again out there at the Camp did you have trucks taken over to Wahiawa for servicing or fixing up for inspection, did you?

A. Yes, that was every week.

Q. And whose duty was that?

A. That was the duty of the superintendent and the foreman of the working gangs; each foreman has a truck with his own gang and has a driver.

Q. Did Mr. Mookini have anything to do wtih that?

A. Not that I know of.

Q. Did you ever order him to take any trucks to Wahiawa for servicing?

A. Not that I know of.

Q. Do you know how Mookini happened to get this job as Mess Officer; in other words, did you suggest him; who suggested him?

(Testimony of William E. Miles.)

A. Well, it was a general suggestion all around, because Mr. Gibson was being pressed there; he had so much to [849] do with his quartermaster duties and attending to supplies and necessities of the Camp as well as the individual enrollees themselves, it was impossible, and if I remember well, I think Mr. Mookini himself offered—I'm not certain on that——

Q. Never mind, then, if you're not certain. During the time you were at the Camp you did have various transactions with Lee Chong?

A. From the month of April on.

Q. Did you ever deal with anybody there with the exception of Lee Chong?

A. I, personally?

Q. Yes.

A. No.

Q. Did you have dealings with anybody by the name of Chun Yau Chee?

A. I don't know that name.

Q. Or Lee Kim Yip, or Lee Tim Yip?

A. I don't know any of them, I never heard of them.

Q. At the time of the delivery on May 12th did you direct Cunningham to change the item of paper plates to something else of an edible nature?

A. No, I never had a chance to talk to Cunningham.

Mr. MOORE: That's all.

(Testimony of William E. Miles.)

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Miles, what do you mean when you say that it was Mookini did the ordering? Do you mean that you personally know that he went in town and made the purchases and then Cunningham didn't do that at all? [850]

A. I personally know that when we agreed on Mookini to do the purchasing, I turned around and says, "Bob, you see that these things are bought."

Q. "You see that these things are bought." We have been talking a good deal on this trial about who goes physically in the store and puts the order down on the counter. Do you happen to know of your own knowledge that Mookini went in and put the orders on a store counter?

A. I can't swear to that.

Q. In other words, you told him to see that these things were gotten?

A. Sure.

Q. After that, they were gotten, and who actually did the getting, physically getting the groceries or whatever it was, you don't know?

A. No. If you don't mind, I'll say that I know this much, that he was in town for the purpose of making these purchases.

Q. That is, you sent him to town or you told him to go in and make the purchases?

A. Yes; he was in town for two days.

Q. Did you have any idea he was in town two days doing nothing but buying things for the Camp?

(Testimony of William E. Miles.)

A. He went to town and came back.

Q. Oh, don't you know that his wife was taken to the hospital and he had a lot of things on his mind besides this thing?

A. That's quite true.

Q. You dealt with Lee Chong as the manager of the Lee Chong Company, didn't you?

A. Yes sir. [851]

A. You never had occasion to investigate the ownership of the Company, or anything of that kind?

A. No sir.

Q. You don't know whether Mr. Mookini ever went anywhere on the trucks, or not, do you?

A. No sir.

Q. You mean, you can't say?

A. I can's say, except it was told me, that's all.

Q. Somebody had charge of the trucks; I don't think anybody has claimed that Mookini had charge of them, or anything of that kind; but whether he went with them at any time you're not in a position to say?

A. No, I'm not in position to say.

Q. Did I understand you to say that you did not even see Lee Chong on the morning when the Mothers' Day order came over there?

A. Oh yes, I saw him; I sent word I wanted to see him if he came into Camp, and he was in there.

Q. He was there, but nothing was said about oysters for flowers, or anything of that kind?

(Testimony of William E. Miles.)

A. Well, as I testified, I asked Mr. Cunningham, I said, "What is this item 500 oysters?" He said, "I think they are flowers."

Q. That was said there at that time?

A. Yes. That was my original testimony.

Q. Did you so testify on your direct examination?

A. Yes sir.

Q. So you did know, just as Mr. Lee Chong said, that the morning he brought those things there that the flowers were "oysters"? [852]

A. Yes; but when the bill was questioned for payment I was told again it was oysters—the menu showed they had oyster stew; naturally there was nothing for me to do but take the word of my trusted officers.

Q. But you knew at the time Lee Chong brought that bill of goods out there on Mothers' Day that the item of oysters represented flowers?

A. I didn't know it at that time.

Q. What have you been telling me just now? Didn't you just say that Cunningham did say it was flowers?

A. Cunningham is the one that said, "I think it's for flowers"; then, later on, when our office told me we had oyster stew, I took their word for it.

Q. Cunningham told you that morning that he thought the "oysters" were flowers?

A. Yes.

Q. You were there, and there weren't any oysters coming on that load?

(Testimony of William E. Miles.)

A. He wasn't certain.

Q. Didn't you feel you had some obligation to the United States Government to find out?

A. I did find out before I paid the bill, and he told me it was oysters.

Q. You did find out before you paid the bill?

A. Yes.

Q. Don't you know that you paid for oysters, and then, three or four months later, you made a revision on this thing?

A. That was when the correct story came to me. [853]

Q. You still want this jury to understand that you have not received any offer of immunity or anything of that kind for testifying for the Government?

A. I do.

Mr. ULRICH: That's all.

Re-direct Examination.

By WILLSON C. MOORE, Esq.

Q. As I understand it, Mr. Miles, Cunningham when this load came out said something about these oysters being flowers, and later on you talked to Mookini and he told you that Cunningham was "crazy" and that that was for oyster stew, and showed you the menu with oysters on the menu?

A. There was a scratch menu that they had; they didn't have a regular form at the time.

Q. Then it wasn't until September that you found out this was correct?

(Testimony of William E. Miles.)

A. Until I made my own investigation of it in the latter part of August.

Mr. MOORE: That's all.

Re-cross Examination.

By BARRY S. ULRICH, Esq.

Q. When was it you had this conversation with Mr. Mookini relative to this being oyster stew?

A. We were checking up on the bills before payment; I says, "I understand Cunningham says this 500 oysters is for flowers." He laughed at me; "Why no, Captain," he says, "it's oyster stew."

Q. Where was this?

A. Right in the office there, right at my desk. [854]

Q. That was before he really had found out that they were flowers?

A. Who really had found out?

Q. Mr. Mookini; Mr. Mookini has said that he didn't know that they were flowers until considerably later.

A. I don't know what Mr. Mookini said, but what he told me——

Q. I thought he really had said there were oysters, and that there were oysters on the bill of fare? That's the conversation you're talking about?

A. That's what he told me, yes.

Mr. ULRICH: That's all.

JOHN EDWARD CUNNINGHAM

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Mr. Cunningham,——

A. Yes sir.

Q. Talking of the order of May 12th, that is, the Mothers' Day order, did you direct Mr. Lee Chong to charge the flowers as oysters?

A. No sir.

Q. Did you tell Mr. Lee Chong that Miles had directed you to inform him or ask him to charge the flowers as oysters?

A. No sir.

Q. Showing you United States Exhibit "D", which is the voucher substituted for the one in which the goods were delivered for the May 12th day party, or Mothers' Day party, you see that signature there (indicating)?

A. Yes sir.

Q. Were you present when that was signed? [855]

A. Yes sir; that's the very same one I had, sir.

Q. Where was that signed?

A. It was signed right at the breakfast table in the dining room, sir.

Q. And with the one that you referred to, what did you do with the one that was signed at the breakfast table?

A. Kept that in my pocket, sir.

(Testimony of John Edward Cunningham.)

Q. Will you take a look at that (indicating); is that the same one?

A. Looks like it.

Q. Showing you this exhibit, did you ever see that before? That's handing the witness United States Exhibit "C".

Mr. ULRICH: Let me see the one he kept in his pocket.

(Mr. Moore shows document to Mr. Ulrich.)

A. I believe this is the one I kept.

Q. This is the one you kept in your pocket?

A. Yes; it's folded up.

Q. Showing you United States Exhibit "D" again—the one he said he kept in his pocket is "C"——

A. It's "C". I don't know where that one was signed.

Q. You don't know where that one was signed?

A. No sir.

Q. Were you ever down to Lee Chong's after this May 12th affair and when a voucher was signed down there by Mr. Mookini?

A. I was down there two or three days after that, and I believe that Mr. Mookini had some of the vouchers fixed up, and he signed them, sir.

Q. Did he ask you anything about them? [856]

A. Well, he says, "Is everything all right?" I says, "I suppose so." He done the ordering, sir.

Q. Now, with reference to this Exhibit "C", the one that you kept in your pocket, were you ever requested at any time by Mookini to produce that?

(Testimony of John Edward Cunningham.)

A. Yes sir; he asked me about this bill on Monday, I believe.

Q. That's Monday following Mothers' Day?

A. Yes sir. I told him I didn't know what became of it. I had it in my pocket and I thought I sent it with my clothing to the laundry.

Q. What did he say?

A. He said, "That's all right, I'll get the other copy down at Lee Chong's, I'll have to do some changing."

Q. Now, this luau order, did you give that order?

A. I gave it to Mr. Mookini, sir.

Q. Did you give it to Lee Chong?

A. No sir.

Q. Did you direct anybody at Lee Chong's to fill that order?

A. I went with Mr. Mookini down there, and Mr. Mookini gave Mr. Lee Chong the order.

Q. Now, on the day this stuff was delivered for the luau did you go back to Camp with any of it?

A. The following morning——

Q. The morning following what?

A. The morning of the delivery for the luau Mr. Mookini sent me down to get the pork—the pigs and other meat for the luau and the laulau stuff there, so as to give us a start on making our laulaus.

Q. And how did you take the pork and the luau stuff out there?

A. Took it out on Lee Chong's truck, sir. [857]

Q. On Lee Chong's truck?

(Testimony of John Edward Cunningham.)

A. Yes sir, Lee Chong delivered it out there, sir.

Q. How did you go back to Camp?

A. I went back with Lee Chong, on Lee Chong's truck.

Q. How many loads of this stuff went out there?

A. Two loads, sir.

Q. And how did the first load go?

A. I went out with the first load, sir, and the other load came out in the afternoon.

Q. And the first load consisted of what?

A. Of luau; three pigs, pork, some beef, some mixed up with the pork for the laulaus, and several other items; I believe sweet potatoes come out with that also.

Q. That's the stuff you have to put in the imu?

A. Yes sir.

Q. The other stuff came on later?

A. The other stuff came later. I believe some ti leaves went out with that same order.

Q. Does that go into the imu, too?

A. Yes sir, for making the laulaus out of the pork and the beef.

Q. When the second load was delivered did the voucher come out on that, do you know?

A. On the second load, yes sir.

Q. These are your initials on United States Exhibit "G", are they?

A. Yes sir.

Q. Is that the voucher for that September the first?

A. September the first, sir.

(Testimony of John Edward Cunningham.)

Q. During this period of time that you were cook out [858] there, did you ever get any drinks from Lee Chong?

A. Yes sir, all the time.

Q. Who put out the liquor?

A. Lee Chong did, sir.

Q. Did you ever bring any there yourself?

A. Only once; I got tired of waiting for him—he was out; I bought myself a bottle and sat there and drank half of it, and when I got through I took the other half out.

Q. What kind of liquor was that?

A. That was gin I bought; I bought it at the Corner Drug Store.

Q. That's the only time you brought your drinks?

A. That's the only time; all the rest of the time Lee Chong put it up, Sir.

Mr. MOORE: That's all.

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. I understand you now to testify, Mr. Cunningham, that you had nothing to do with directing the changes that were made in the Mothers' Day order, is that right?

A. I didn't sir.

Q. What?

A. I didn't.

Q. You had nothing to do with it, is that right?

A. Nothing to do with the changing, sir.

(Testimony of John Edward Cunningham.)

Q. You didn't even know that they were being changed, I suppose—or did you?

A. I knew afterwards, when Mr. Mookini asked for the bill, to go down and have it changed,—that he wanted some changing done. [859]

Q. All the people that have testified in this case, except you, they all seem to agree that you were there; but that is not true, you were not there at all when the changes were requested?

A. I was down there, as I said, two or three days after this party there, when Mr. Mookini was making the changes there, which I didn't know nothing about it; when this voucher came out camouflaged I didn't know nothing about it.

Q. You said you had no conversation at any time with Mr. Lee Chong about oysters as flowers?

A. No sir; liquor come out as oytsers.

Q. You had no talk with Roque about oysters as flowers?

A. No sir.

Q. You didn't have anything in your mind concerning oysters connected with flowers; it was liquor, so far as you were concerned, is that the idea?

A. All I can say is that when Lee Chong brought this liquor out he told me he had to mark it as oysters.

Q. And the first thing you knew about anything being wrong with this order was when Mr. Lee Chong came to you and said, "Here's some liquor;

(Testimony of John Edward Cunningham.)

I have marked it as oysters; I want you to give it to Mookini"?

A. No sir. I asked Lee Chong, "What you want to do it for?" He says, "I can't help; he force me."

Q. What happened was that he brings this liquor over to you, carries it in a box?

A. He handed it to me; I carried it.

Q. He must have carried it if he handed it to you; he carried it from the truck? [860]

A. He handed it from the truck.

Q. He just did this—lifted it over to you?

A. Yes sir.

Q. Here was a great big sign which said "Mookini"?

A. "Robert Mookini".

Q. "Robert Mookini" in stenciled work on the box?

A. Not stenciled, no; it was handwriting, sir.

Q. Handwriting?

A. Not stenciled.

Q. How big were the letters?

A. About 3 inches.

Q. Three inches high; that's a fairly sizable letter; and that was just spread right across the top of the box?

A. Exactly.

Q. "Robert Mookini"?

A. Yes sir.

Q. Anybody looking at that load of goods wouldn't have any trouble seeing that sign on that box?

(Testimony of John Edward Cunningham.)

A. It even was marked "Handle with care".

Q. All on the top of the box, "Robert Mookini; handle with care"?

A. Yes sir.

Q. Three inch letters, black letters?

A. Right you are.

Q. And he brings this box over to you and says that "I have marked these as oysters; Mookini forced me to do it; please give it to him"? I don't mean in those words, but that was the substance of it?

A. Well, say what you mean so I can understand you. He handed me this box, showed me the bill that he had marked as oysters—the oysters was liquor; and the rest [861] of the articles were camouflaged. "Why," I told Lee Chong, "why did you do this; do you want to get yourself in trouble?"

Q. Oh I know, you've explained all that. Then he explained he was forced to do it. Do I understand you to say—showing you the United States Exhibit "C", a carbon copy of the first bill that came out with the Mothers' Day load; is that the document that you carried around in your pocket?

A. Yes sir.

Q. That's the document that Mr. Mookini signed at the breakfast table, I believe you said, is that right?

A. Yes sir.

Q. What became of the original bill?

A. Lee Chong took it back, sir.

(Testimony of John Edward Cunningham.)

Q. And you had OK'd this one?

A. Yes sir.

Q. You carried this thing around in your pocket until some time in September, is that right?

A. No sir.

Q. When did you stop carrying it around in your pocket?

A. I stopped carrying it around in my pocket for about a couple of weeks, and then I put it away.

Q. You carried it, with the exception of two weeks, then, until some time in September, is that right?

A. No sir; until about August 12th.

Q. August 12th?

A. August 12th to August 14th.

Q. What brought the matter to a head on August 12th?

A. I turned that bill in to Captain Miles; I showed that bill to Captain Miles, and I held on to that bill until I was called in to Mr. Lloyd's office. [862]

Q. All right; then, from May 12th, June 12th, July 12th, August 12th, it was in your pocket?

A. It wasn't; I just told you I only kept it——

Q. Except two weeks?

A. No sir; I kept it in my pocket for two weeks, for safe-keeping.

Q. Was that the two weeks immediately following the time when you got it?

A. From the time I got it.

(Testimony of John Edward Cunningham.)

Q. That's the time you had it in your pocket for two weeks?

A. For two weeks.

Q. Did this conversation you tell us about this morning, when you met Mr. Mookini on the Monday —was that following Mothers' Day?

A. He met me, he asked me for the bill.

Q. He asked you for the bill, and you told him it had gone to Lee Chong's?

A. I told him I didn't know what had become of it, that it went to the laundry with my clothes.

Q. At that time you had it in your pocket?

A. I did.

Q. Now these other bills—showing you the Government's Exhibit "D", that's the bill with Mr. Mookini's name on it, also dated May 12th, without the paper plates and so forth; when do you now tell us you first saw that bill?

A. That bill was down in his office.

Q. Whose office?

A. Lee Chong's office.

Q. Lee Chong's office?

A. Yes sir, when Mr. Mookini signed these bills. [863]

Q. Were you there?

A. I believe I was there at the time.

Q. Well, you have been testifying right along here; what do you understand you've already told us;—that you were there, or you weren't there?

A. I was there afterwards.

(Testimony of John Edward Cunningham.)

Q. You were there afterwards?

A. About two or three days afterwards. He went down Monday to have these changed, and I believe I went there about Wednesday with him.

Q. Tell me whether you were there when he signed it, or not.

A. He signed those bills when I was there.

Q. Then you were there when he signed them?

A. Yes sir.

Q. What's this talk about "two or three days later"?

A. It was later when we went down when these bills were signed.

Q. Later than what?

A. I just told you, Wednesday.

Q. Later than Wednesday?

A. He went down Monday to have this bill straightened up, and we called there a couple of days later and he signed these bills; he asked me if they were all right.

Q. And you said they were, and he signed?

A. I said, "I guess you ought to know", and he signed them.

Q. There has been evidence to the effect that you were in there and had these things changed, and went out?

A. No sir, I had nothing changed.

Q. You had nothing changed? [864]

A. No sir, I had no authority to have nothing changed.

(Testimony of John Edward Cunningham.)

Q. And nobody had said anything to you about changing these things?

A. Mr. Mookini told me, he asked me for my copy, that he had to go down and have some changes made on the bills.

Q. And then when he asked you for the copy you said you couldn't find it, is that right?

A. I didn't try to find it.

Q. I say, you told him you couldn't find it?

A. I told him I didn't have it, that I didn't know what became of it—what I just told you.

Q. That was the time he said he wanted to have it taken down to have changes made?

A. That's what he wanted.

Q. Then you didn't have any talk with Mr. Mookini or Mr. Roque or anybody over there at all about this matter, and the first thing you knew about any bills being OK'd down there was when you were down there two or three days later, when Mookini asked you and you said "You ought to know", or something like that, and he signed?

A. Yes sir.

Q. Did you go in together on that occasion?

A. Yes, I believe we did go in together.

Q. And when you got in there was it already to be signed?

A. No, it wasn't; we had a few "shots"—the bottle came out and we had a few "shots" and kept on drinking, and finally brought this out.

(Testimony of John Edward Cunningham.)

Q. Would you say you had reached the stage of intoxication before this came out?

A. Why no. [865]

Q. How long had you been drinking before this came out, as you expressed it?

A. 15 or 20 minutes, maybe half an hour.

Q. And who brought it out?

A. Mr. Lee Chong.

Q. Roque wasn't even there?

A. Every time we went in, Roque would walk out, but when we wanted ice water or ginger ale Roque would wait on us.

Q. Mr. Roque had walked out; he didn't bring out the bill?

A. I don't know whether he brought the bill out or not; Lee Chong handed Mr. Roque the bill.

Q. I thought Roque had walked out on you.

A. Roque always walked out when we went in.

Q. And Roque handed you the bill?

A. He did not, I told you; he handed it to Mookini.

Q. He did not hand you the bill, he brought it out, is that right?

A. Yes sir.

Q. Did you tell us on your direct examination even so much that you had said the bill was all ready or you guessed it was all ready, or is that an afterthought that you're giving us now?

A. No, I'm not giving you nothing now; I didn't think it out very much.

(Testimony of John Edward Cunningham.)

Q. Did you tell us on your direct examination that you even said the bill was all right on that occasion?

A. He asked me——

Q. I am asking you what you testified to the last time [866] you were on the witness stand, if you know; and if you don't know, say so.

A. He asked me if it's all right; I says, "I guess so; you ought to know."

Q. Did you say that when you testified a few days ago?

A. Oh, something to that effect, I believe; I don't remember.

Q. As I understand your testimony now, the Labor Day order went out on two deliveries, is that right?

Mr. MOORE: No, that is not the testimony; it's the September 1st.

Mr. ULRICH: The Labor Day order, the September 1st.

Mr. MOORE: I was thinking of Mothers' Day; you're right, Mr. Ulrich; I'm sorry.

Mr. ULRICH: As I understood you to testify a moment ago, that September 1st order went out on two loads, is that right?

A. It did.

Q. And one of those loads was a load that you took out with one of Lee Chong's trucks, is that right?

A. I went out with Lee Chong's truck; Lee Chong had to deliver that out there.

(Testimony of John Edward Cunningham.)

Q. And that was one of the Labor Day loads?

A. Yes sir, for the luau.

Q. The luau loads, yes. Who drove the truck?

A. I believe it was Yaga, a Japanese boy there.

Q. Yaga, a Japanese boy that works for Lee Chong?

A. Yes.

Q. Anybody else on the load?

A. Probably his little son Henry; I really don't remember; [867] probably his little son was on the wagon at the same time.

Q. Henry Lee, or whatever his name is?

A. Hendry.

Q. And that load took the keawe wood and Hawaiian foods or luau material?

A. No keawe wood was on that load; the keawe wood came out afterwards.

Q. But the luau, and the different things for the luau, the Hawaiian foods?

A. Some of it.

Q. Do you know how the other load went out?

A. It come out in the afternoon.

Q. Oh.

A. By, I believe, the same driver he had there.

Q. The same driver he had there on both loads came out on Lee Chong's truck, is that right?

A. Yes sir.

Q. And the bill for the September 1st load came out to the Camp with the load and was there signed by you, is that right?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. Now, you're perfectly sure that that was signed out at the Camp when the load was delivered?

A. There's always a bill delivered with the goods.

Q. Yes, and that these goods were delivered by Lee Chong's trucks or Lee Chong's truck to the Camp, and the last load carried the bill, which you signed as you received the material out there at the Camp, is that right?

(Witness hesitates)

Q. Well, that's what you told us a few moments ago. [868]

A. Just a minute, just give me a second to think. I believe at that time one of our C. C. trucks brought the firewood, the wire, that called at Lee Chong's for this stuff.

Q. Well, do you want to change your evidence given a little while ago about that; you wouldn't say that you didn't really know, that you were just guessing at it, or anything like that, would you; do you really want to tell us that you're in doubt about these things now, Mr. Cunningham?

A. Just a minute; let me think.

Q. How is it that you have to stop and think—you don't know?

A. No, there were two deliveries made.

Q. Well, were these Lee Chong's trucks, or C. C. C. Camp trucks?

A. Lee Chong's truck, because the C. C. wagon had to go out and get rock to bring out; no, that ran for the imu.

(Testimony of John Edward Cunningham.)

Q. So now you're sure, quite, that both deliveries were on Lee Chong's truck?

A. The two deliveries he made.

Q. And no longer are you in any uncertainty on that?

A. No; two deliveries.

Q. And you, of course, recall signing this just as you did the Mothers' Day order and all that sort of thing, when they were delivered out there?

A. Not the Mothers' Day order; Mr. Mookini signed the Mothers' Day order.

Q. Do you want to say that you didn't receive the Mothers' Day order and sign for it? [869]

A. No, but you just accused me as though I signed both of the orders.

Q. I'm not trying to accuse you of anything, Mr. Mookini.

A. No, I'm not Mookini, thank you.

Q. No, I'll say you're not. I am trying to ask you whether you signed it when you got this order, as you signed for the Mothers' Day order as it came out; and if you want to change your testimony about signing for the Mothers' Day order, say so.

A. I signed for this; my signature is there.

Q. Do you mean to say you didn't sign for the Mothers' Day order when it came out?

A. I signed for the one, and Mr. Mookini for the other.

Q. In other words, Mr. Mookini signed for the Mothers' Day order when it came out?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. What in the world is your signature doing on the Mothers' Day order? You told us at first, you admitted that you had signed for it; do you want to change that testimony? Here's the Mothers' Day bill (indicating); when this came out there didn't you sign for it?

A. I signed for it, and made Mr. Mookini sign the original.

Q. You took the other into the Mess room and had him sign it while he was sitting at breakfast?

A. Yes sir.

Q. Why did you say you didn't sign for the Mothers' Day order when it came out?

A. I did sign for this one, but not for the one with the lines on it. [870]

Q. It's your testimony that it was Mr. Mookini put those lines there?

A. I don't know that Mr. Mookini put those lines there; when I signed that bill there was no lines on there.

Q. Didn't you say on your direct examination that Mookini had put those lines there?

A. No, I don't know who put those lines there. When I signed that bill there were no lines there.

Q. You're now willing to agree that you did sign for the goods when they came out there?

A. I did sign, yes; my signature is there.

Q. And only once did you buy any liquor that you drank in Lee Chong's place, is that right?

A. That's right.

(Testimony of John Edward Cunningham.)

Q. I recall your testimony now, Mr. Cunningham, to be to the effect that until some time later you had thought that the oysters represented booze, is that right?

A. I didn't think so; I knew so.

Q. You knew so?

A. From Lee Chong's own statement to me, his own word to me.

Q. Now, is it not true, Mr. Cunningham, that the first day when that load came out there you and Mr. Miles were standing together, and Mr. Miles asked you whether or not these oysters had been delivered, and you said you thought that the oysters were flowers; isn't that true?

A. No, that's not true.

Q. That's not true?

A. Just a minute, I'll explain what happened.

Q. Go ahead. [871]

A. I was out in the road, and Mr. Miles told me when Lee Chong came out there he wanted to see him. All of a sudden Lee Chong's truck blowed in. I said, "Lee, Mr. Miles wants to see you." So Mr. Miles said, "Well, Lee, what have you got for us?" Lee got the bill from his son and handed him. Miles says, "500 oysters, what's that, is it liquor?" I says, "I don't know, maybe it's flowers." He said, "I don't know." Then they had a talk together and Lee Chong handed me the bill and said, "You better go check your stuff"; so I went on checking it, and when the wagon was about half unloaded Mr. Miles

(Testimony of John Edward Cunningham.)

came in the kitchen then; he asked me, "How's everything?" I said, "Everything is all right so far." So then Lee Chong called me outside when Mr. Miles walked away, and he told me, "Cunningham, I got a box for Bob." I said, "A box of what?" He said, "Some booze."

Q. You've told us that a lot of times.

A. And he said, "I had to mark that down as oysters."

Q. To get back to your conversation with Miles: A few moments ago you told me in answer to a question I asked you had not told Mr. Miles or said anything to Mr. Miles about these oysters being flowers. Now in the answer you give me you slipped in something about flowers. Did you or did you not say that those oysters were or that they might be flowers?

A. I did not tell Mr. Cunningham,—I mean, Mr. Miles; just as I explained to you—

Q. Will you answer my question, please. You've done a great deal of explaining. I want an answer "Yes" or "No"; then I'll step aside and you can do all the [872] explaining you want. Did you or did you not say anything to Mr. Miles about these oysters being flowers?

A. I said I thought they were.

Q. What did you mean by telling us you had no idea about their being flowers?

A. How did I know what was in the box; how did I know what Mookini ordered?

(Testimony of John Edward Cunningham.)

Q. Well, why were you telling him about flowers?

A. Because I didn't know.

Q. Why did you think they were flowers unless you had some idea of the change?

A. I didn't know until I got this voucher.

Q. Where did you get this flower idea from?

A. Because there were flowers for Mothers' Day.

Q. There for the first time it occurred to you, when Mr. Miles spoke to you, that the oysters might be flowers?

A. I told him, "I don't know until I look this up"; he said, "What's this item of 500 oysters, Johnny?" I said, "I don't know, maybe it's flowers, maybe something, I don't know."

Q. But, even so, you did say they might be flowers?

A. I did say they might be flowers, and I said I didn't know.

Q. But didn't say that it was flowers?

A. No sir; I didn't know nothing about it until the truck was empty, when the box of liquor was handed to me, then I knew it was marked as flowers because Mr. Lee Chong told me.

Q. And then Lee Chong did this little talk about being forced to bring the liquor.

(No response). [873]

Mr. ULRICH: I think that's all.

The COURT: Mr. Cunningham, just one question. Do your friends, when they speak to you familiarly, call you "Jack"?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. There has been quite a bit of evidence here about "Jack" in connection with matters that you were connected with.

A. That's correct.

Q. And that's the way they commonly address you, just like any other John?

A. Yes sir.

The COURT: That's all.

(Recess—9:23 to 9:35 a. m.)

JAMES R. MAHAFFY

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Major, did you ever ask Mookini to be Mess Officer—I mean, go out and solicit him for your Mess Officer?

A. No sir.

Q. Did you state at any time that unless somebody took over the Mess that you would lose your first month's pay and would have to pay it out to cover the shortage?

A. No sir.

Q. Was there any conversation with reference to shortage in the Mess?

A. Well, I can explain just the situation——

(Testimony of James R. Mahaffy.)

Q. All right, let's have it. [874]

A. I drew a certain amount of advance rations, I think it was $475.00; there were dozens of things going on during the organization of the Camp, and my impression was that that $475.00 could be absorbed in this storeroom or in a month or two; and as I got along, about somewheres, I guess, the 20th of the month, it came to the ration account I knew had to be straightened up at the end of the month, and I inquired to see whether that advance ration went in the storeroom,—I had forgotten—and learned that it didn't; that that advance ration was simply given in advance and would have to be accounted for at the end of the month; then I told someone—I think it was Mr. Miles—to give me an audit of how we stood, and I found that we were still ahead in money and still ahead in the storeroom, and counting in the $475.00. Now, I do recall—we were sitting around—of saying that if this Mess account, yes, if the Mess account was short there was nothing in the regulations that prohibited me from charging a pro rata to every officer that was boarding at the Mess, because I wasn't allowed any rations for the boarders; that's the way that might have come, but that was more in a joke than anything else; I understood thoroughly how the rations should be offset; I had that audited.

Q. And, with reference to that first month that you were there, who was the person or persons that actually watched that Mess so that it came out over and above-board?

(Testimony of James R. Mahaffy.)

A. Well, up until this time Gibson was the man that was in charge of the purchasing and, well, in fact, up until that time that I asked for the audit I think everybody [875] was watching the Mess; we were all interested in seing how it went along; I couldn't state it was any particular person except Gibson who was responsible as quartermaster.

Q. Now, how did you say it was that Mookini became Mess Officer?

A. Along about this time Mr. Miles and Mookini came in—I explained this before——

Q. You've already explained that before?

A. Yes.

Q. Then we don't want any rehash of it. I think's that's all, Major Mahaffy.

CrossExamination.

By BARRY S. ULRICH, Esq.

Q. So whatever was said about making up any funds, anything like that, out of your pocket or anybody else's pocket, was just a sort of joking remark passed in connection with this set of circumstances that you've told us about?

A. Yes sir.

Q. There has been some evidence here about your having to drag Mookini out of bed, or some such thing as that. Did you ever have to drag Mookini out of bed?

A. No sir. It would be a hard job for me.

Q. Did you ever try to get him out of bed, or anything like that, in the morning?

(Testimony of James R. Mahaffy.)

A. No sir. We had an argument about the calisthenics when the Camp first started.

Q. You had some argument about calisthenics?

A. Yes.

Q. It wasn't inspired by any refusal of Mr. Mookini to get up in the morning, or anything like that?

A. No sir. [876]

Mr. ULRICH: That's all.

Re-Direct Examination.

By WILLSON C. MOORE, Esq.

Q. About this calisthenics, what was this argument?

A. Well, when the Camp first started I said the very day that the boys came out there that they must have calisthenics in the morning starting out, and Mr. Mookini was under the impression that we should wait a while.

Q. And what did you say in reply?

A. I said that should start the first morning, and that if he didn't want to do it, I would do it myself.

Q. Was there anything said by him that you shouldn't do it because these boys had been vaccinated?

A. No sir; they hadn't been vaccinated then.

Re-Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Try to recall now, Major, if you will, what happened with reference to vaccination. The only

(Testimony of James R. Mahaffy.)

"shot" that they get is when they come out there?

A. "Shot in the arm", yes.

Q. Do you remember when they got that "shot"?

A. That started the day after they came.

Q. I think you want to try to remember this thing as best you can?

A. Yes, I do.

Q. Isn't it possible that there may have been some discussion between you and Mr. Mookini about their having had some innoculation before that time?

A. Yes sir, there could have been, and if there had been, as I recall, the only one that could excuse anyone [877] from calisthenics was the doctor.

Q. But that might have entered into the discussion, might it not?

A. About this particular time, no sir, there wasn't any discussion over it; I just said that's what I wanted; that was the first day.

Q. Well, they were to be innoculated—either had been innoculated or were to be innoculated next day, were they not?

A. Yes, they were to be innoculated in a group.

Q. They really were being innoculated?

A. Yes sir.

Q. Can't you understand that there might be some question in the mind of Mookini whether they ought to take calisthenics?

A. Yes, there could have been, but I thought that the doctor was the one to be responsible for that and was the one to make the decision.

(Testimony of James R. Mahaffy.)

Q. So that, that could have been a part of the discussion?

A. Oh yes, sure, yes sir.

Mr. ULRICH: That's all, Major.

Mr. MOORE: That's all.

DR. JAMES ENRIGHT

was duly called and sworn as a witness for the Plaintiff, in rebuttal, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. James Enright.

Q. Your profession?

A. I am a physician and surgeon. [878]

Q. Practicing your profession now in the Territory of Hawaii?

A. Yes.

Q. And are you connected in any way with the Civilian Conservation Corps?

A. Yes; I am the physician and surgeon for the C. C. C. Camp at Schofield.

Q. And when did you first get that position, Doctor?

A. In the last two days in January, 1934.

Q. And you continued right through and are still in that position?

A. Yes sir.

(Testimony of Dr. James Enright.)

Q. Do you know Mr. Mookini?

A. I do.

Q. And at one time he was an officer out there at the Camp?

A. Yes sir.

Q. Do you recall one morning some time after this luau of September 1st of last year, of having a meal over at Kemoo Farm where you had a conversation with Mr. Mookini?

A. I remember.

Q. And at that time there was some discussion about the Camp; do you recall any particular conversation by Mr. Mookini about anyone in Camp?

A. Yes sir.

Q. Just give us that, to the best of your recollection, doctor.

A. This was, I believe, a Monday morning; I went down to Kemoo Farm to get a cup of coffee, and while I was there Mr. Mookini stepped in to the place, and he had an order of something, and at the time he said to me, he says, "Those sons of bitches up at the Camp"—— [879]

Q. Give us the language; there's no women here, or if there is we can't help it.

A. "Those sons of bitches up at the Camp are talking about me; I'm ready for them and I'm going to get them, and one of them is Cunningham."

Q. At the beginning of this Camp, doctor, did you visit the store of Mr. Lee Chong with Mr. Mookini?

A. Yes, about two or three times.

(Testimony of Dr. James Enright.)

Q. Did you ever talk anything about getting any groceries there?

A. Yes sir.

Q. Who was that conversation with?

A. That conversation was with Mr. Lee Chong.

Q. Was Mr. Mookini there?

A. Yes sir.

Q. All right; let's have that conversation to the best of your recollection.

A. Mr. Mookini took me down to Lee Chong's; he was rather enthusiastic over the quality of the vegetables that we were getting there. We went down to Lee Chong's, and we were talking about the way he handled the business, that he used to wholesale to the ships, telling me more or less how he ran his shop; and I had asked him if it were possible for me—if he retailed as well as wholesaled; he said yes; I asked him if it was all right if I could buy vegetables there for my own home, and I told him I might have to run up a bill to the end of the month, that most of the time at the Camp I would leave my money at home and on the way home I would like to pick up some vegetables but I might not have sufficient at the time to pay for them; so he [880] thought a second, then he said, "Yes, that will be perfectly all right; I might be able to arrange it so you wouldn't have to pay for them." I said, "Well, I want to pay for everything I get here." And I had made several purchases at different times; I ran a bill for a few days, and I paid them all, and I have the receipts.

Mr. MOORE: That's all, Doctor.

(Testimony of Dr. James Enright.)

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. When was this talk in Lee Chong's office or in Lee Chong's place of business?

A. I could not recall the exact date; it was rather early in the period of the Camp, during the time that the vegetables were being purchased from Lee Chong.

Q. Yes. Now, Lee Chong told you that it could be arranged so that you could have an account there, or something of that kind?

A. Yes.

Q. You wanted to know if you could drop in and buy groceries from time to time, and so forth?

A. Yes.

Q. And now Lee Chong told you that it could be arranged so that you wouldn't have to pay for those groceries?

A. No; he said it might be possible to have it arranged so I would not have to pay for them.

Q. Well, apropos of what was such a remark made? Had you suggested anything of the kind, that you wanted him to give you any groceries?

A. No.

Q. Any details gone into as to——

A. None. [881]

Q. You say Mookini was there?

A. Yes.

Q. Now, is this the Mr. Lee Chong you're talking about, sitting here (indicating)?

(Testimony of Dr. James Enright.)

A. Yes, that's Mr. Lee Chong.

Q. Anybody else there?

A. Not that I recall; just the three of us, I believe.

Q. And it was about what month?

A. Beg your pardon?

Q. About what month?

A. I could not recall the month at all; I know it was during the time we were buying vegetables from Lee Chong.

Q. Anything said about the amount of groceries or of vegetables that it might be possible to give you for nothing, or anything like that?

A. No.

Q. You sat on the idea immediately and said you didn't want to do that, or something?

A. I did; and it was never mentioned again.

Q. But you did go ahead and get some things there from time to time?

A. I did.

Q. And bills were rendered to you, were they?

A. Yes.

Q. And you paid for them?

A. I did.

Q. When Mr. Mookini told you about these people over at the Camp that he was going to "get" —is that the word that you said?

A. Yes.

Q. Did he tell you what they had done?

A. No.

(Testimony of Dr. James Enright.)

Q. Explain to you why they were going to be gotten, or [882] anything of that kind?

A. No.

Q. Cunningham was the only one he mentioned?

A. The only one by name.

Q. Did he say anything that led you to know that Miles was another one?

A. No.

Q. Just Cunningham?

A. Just Cunningham.

Q. And that conversation was when?

A. That conversation was some time after September, or some time in September, at the time —the time I place it is because Mr. Mookini—we had always been good friends—and Mr. Mookini had told me this, and it was the first inkling I had that anything was wrong at the Camp;——

Q. Did you know that there was under way at that time an investigation of Miles and charges against Lee Chong?

A. No, I did not; I didn't know there was anything serious; there was some talk about it; but when Mr. Mookini said——

Q. I'm just trying to place it; the record shows that some time early in September an investigation was started. You didn't know anything about that?

A. No, I did not.

Q. Or the charges or counter-charges, or anything at all?

A. Not at all.

Q. You remember there was a time when Miles was relieved of duty out there, don't you?

(Testimony of Dr. James Enright.)

A. Yes.

Q. When was this conversation with reference to that; very long before that, or after? [883]

A. When Mr. Miles was relieved of duty?

Q. Yes.

A. That was, I believe, in the following April——

Q. Oh no, you're wrong; Miles was let out on October 12th.

A. October, that's right.

Q. Your conversation with Mookini, when was that with reference to that time?

A. That was before that time;——

Q. Was it long before?

A. It was shortly after the early part of September, after the luau, and I'm pretty sure it was a Monday.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

The COURT: You're excused, Doctor.

Mr. MOORE: The United States rests.

MONTY ROQUE

being recalled to the stand as a witness for the Defendants, testified further as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Roque, one thing I am calling you back to get in that I didn't put in when you were on

(Testimony of Monty Roque.)

before. There has been some evidence since you were on the stand, about whether or not you kept an account or statement of these C. C. C. Camp purchases other than these invoices. Did you keep such a record?

A. The only record that I had is the memorandum on that other book of all the checks that were received; is that what you meant, the monthly statements? [884]

Q. As a matter of fact, the evidence has referred to a gray book that you kept.

A. I haven't any book that I have kept except this one (indicating), and the other one.

Q. This is the one we're talking about; this isn't in evidence yet. I show you a book entitled "C. C. C. Camp, Schofield Barracks, Upper Post", starting April 7th, 1934, and continuing down through and including October 13, 1934, and I ask you what that is?

A. That's the purchases of the C. C. C. Camp from the store.

Q. Did you ever try to hide this from anybody?

A. No, I never did.

Q. As a matter of fact, what initials are these on here, if you know?

A. Well, that's Captain Deville's.

Q. You showed him the book, didn't you?

A. Yes.

Q. He took it away, as a matter of fact?

A. He asked for it.

(Testimony of Monty Roque.)

Q. And this contains the statement of the Mothers' Day order, doesn't it, and the September 1st order?

A. Yes sir.

Q. Turn to the Mothers' Day order there.

A. That there (indicating) is it.

Q. May 12th, on page 7 here?

A. Yes sir.

Q. Now I'll ask you to state when that statement was made up with reference to the sending of the goods out there or returning of the invoices, or when; did you make that up before you sent the goods out; did you make it up as you purchased the materials for the purpose of sending it [885] out there, or after the goods had been sent out and you had gotten the receipts for the deliveries?

A. After it's OK'd, then I put it all in the book.

Q. In other words, you took this from the delivery receipts, is that right?

A. Yes sir.

Q. So that this statement of May 12th, 1934, would represent and be the same as the first statement that went out there?

A. No; after it's been OK'd,——

Q. After it's been OK'd, is that right?

A. Yes sir.

Q. That would correspond, then, with Government's Exhibit "B"?

A. No; after it's been OK'd—you see, when I received this bill they told me that it has to be

(Testimony of Monty Roque.)

changed, you see, and so I didn't put it in the book, so I want to keep my books clear, and keeping this original to show what was delivered, you see.

Q. I see. You're right, this is the same, then, as the other bill——

A. Yes, after it's been OK'd and I put it in the book.

Q. This was put in there after the alterations had been made, and it corresponds in there with Government's Exhibit "D", is that right? Just check that; I just want to be sure what it shows.

A. Yes, that's the one.

Q. As to the September 1st order, which I show you, beginning at the top of page 25, that would be the same as the Government's Exhibit "G"; just see if that is right?

A. Yes sir, that's the one.

Q. Is that right?

A. Right. [886]

Q. In other words, after the alterations or changes were made, is that right?

Mr. MOORE: No, no, that's the way it came out originally.

Mr. ULRICH: Well, it did not include—I'll put it this way: With reference to the luau bill, it did not include the keawe wood and other non-edible items which had been put in here as vegetables?

A. No; it's because it was already arranged to be changed before I made the bill.

(Testimony of Monty Roque.)

Q. I understand. Is this all in your handwriting?

A. Yes sir.

Q. I call your attention to something here, 50 pounds California yams, on page 25 of this book, and to some writing, obviously in the hand of some other person, next to that item, "only 25 paid for"; do you know whose handwriting that is?

A. If I'm not mistaken, it's Captain Deville's.

Q. Does it correspond with the other Deville writing on this paper?

A. He's the only one that took this book from me, you see.

Q. That wasn't made by you or anybody in the store?

A. No sir.

Mr. MOORE: We'll admit that Mr. Deville wrote that.

Mr. ULRICH: All right. There has been considerable testimony, for some reason, whether you, at the time that Mr. Deville and some pugnacious Army officer—what was his name?

Mr. Moore: What was that last remark, Mr. Reporter?

Mr. ULRICH: I described him as "pugnacious".

Mr. Moore: I'll ask that that be stricken, may it please the Court. [887]

Mr. ULRICH: All right. I thought he had a rather belligerent attitude; perhaps not; a square jawed fellow with a sort of a—I don't know how

(Testimony of Monty Roque.)

better to describe him; do you remember an Army officer coming in there one time with Deville?

A. Yes sir.

Q. Well, that officer took the stand and recited the list of things that you had given to him at the time, and there seemed to be some question as to whether you recited those off without referring to any other memoranda or record that you may have had. When they asked you what had been sent out on this bill and what had not been sent, how did you tell them?

A. I didn't tell them exactly, because I couldn't remember all; all what I told them is to show me the original bill which—are you referring to May——

Q. Wherever the pumpkin is.

Mr. MOORE: May 12th.

Mr. ULRICH: Was the Captain talking about the May 12th bill; what did he list that list from?

Mr. MOORE: May 12th.

Mr. ULRICH: Yes, I am referring to the May 12th bill. How did you tell him and explain to him——

A. I told him that if they could show me the original bill that I turned over to Mr. Lloyd then I could give him an idea of what we had changed.

Q. Well, did you perform the feat, that's what I want to know, of taking the bill without the changes, with nothing to indicate what the original articles had been, and from memory recite the list of goods? [888]

A. No, I never recited anything to him.

(Testimony of Monty Roque.)

Q. You checked it with the other bill, and from your records told him what the situation was, is that right?

A. Beg pardon?

Q. You checked the two bills, the Mothers' Day against the other bill, and from your records showed him where the changes had been made?

A. They hadn't come down with the bill; I couldn't check it then.

Q. How did you show him which were the ones that had not gone out with the original order?

A. I didn't show him anything at all; all I have shown him is this book and the copy of the invoice that was charged to the Camp.

Q. Here's the bill that came back from the Camp, the first bill that went out there?

A. Yes sir.

Q. Here's the bill with the lines on, as you've testified?

A. Yes sir.

Q. Here is the other bill that was made out after the change was made?

A. Yes sir.

Q. How did you show this Captain and Deville what the difference was?

A. I couldn't show them, because I didn't have this in my possession when he came to the store, Mr. Ulrich.

Q. Is this the bill that Mr. Lee Chong has said he brought back from the Camp with Cunningham's signature on it?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Wasn't that available; didn't you have it around? [889]

A. Yes, but that has to be explained. Before Captain Deville had come to the store we have gone to Mr. Lloyd's office and I had this turned over to him to show him—

Q. In other words, this bill had been turned in?

A. Yes sir.

Q. And you told the Captain?

A. I told Captain Deville that I had turned over this bill to Mr. Lloyd, and that if he could turn it over I could help him.

Q. Did there come a time when you did tell him what the difference was?

A. They never come with it, so I couldn't tell him the idea.

Q. So there wasn't any time when you told to Captain Baldwin and Deville what the changes had been?

A. No, I couldn't give them any idea; I might have mentioned one article, maybe, but I told them I couldn't be sure, so to bring the original bill, then I could help them out.

Q. And you don't recall that being done?

A. No sir.

Mr. ULRICH: I think that's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. In other words, Roque, you never at any time down at Lee Chong's store told Mr. Deville and

(Testimony of Monty Roque.)

Captain Baldwin that the items that were changed upon the May 12th bill were the 500 oysters, 2 cases apples, 400 pounds pumpkin, 400 pounds fresh spinach, 400 pounds white squash, and 40 pounds fresh lima beans, you never told Captain Baldwin, called these off in the presence of Captain Baldwin and Mr. Deville? [890]

A. I never did, sir.

Q. And that's just as true as anything else you've said on the stand?

A. Yes sir.

Q. Then I take it that this book that you've produced here this morning, running from April 7th to October 13th, is a listing by you of all the charges made against the Civilian Conservation Corps Camp, is that right?

A. That's right.

Q. And this Defendants' Exhibit 3, which is a separate and different book, is a listing by you of the totals by the month of the Civilian Conservation Camp bills?

A. Right.

Mr. MOORE: Are you offering this in evidence, Mr. Ulrich?

Mr. ULRICH: Yes. May that have a number at this time?

The COURT: It will be admitted. Please designate it, Mr. Clerk, as Defendants' Exhibit whatever would come in consecutive order.

(Marked—"Defendants' Exhibit 6")

(Testimony of Monty Roque.)

Q. Now, just to get the record straight; Mr. Roque, this book here which is Defendants' Exhibit 6 is a listing by you of the charges made against the Civilian Conservation Camp from April 7th to until October 13th of last year?

A. I'm not sure of the dates, but I know that's the book.

Q. Well, so we'll be sure about the dates, I want you to look at the dates. This first date here is April 7th?

A. Yes; that's my handwriting, sir.

Q. 1934?

A. Yes sir.

Q. And the date of the last entry is October 13th?

A. Right. [891]

Mr. MOORE: That's all.

Mr. ULRICH: That's all. I believe we're through, Your Honor. I'd like to have just about three minutes to confer with my associate here, and then I think we'll be ready.

(Recess—10:10 to 10:22 a. m.)

(Testimony of Lee Sau Chong.)

Mr. ULRICH: If Your Honor please, I am just going to call Mr. Lee Chong for one question.

LEE SAU CHONG

being recalled to the stand as a witness in his own behalf, testified further, as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Lee Chong, you heard the testimony a few moments ago of Doctor Enright to the effect that at one time he had a conversation with you in your store and that you agreed that he might have credit with you; and, more than that, that you said that something might be done so that he wouldn't have to pay for your goods, as I understand his testimony?

A. No sir.

Q. Do you remember seeing Mr. Enright in the store; did he come in?

A. Yes sir.

Q. Did you give him credit; did you say he could have credit?

A. He buy two times from the store.

Q. You said he could buy things there?

A. Yes sir.

Q. Did he buy things there?

A. Yes sir.

Q. Was anything said about his not paying for them, about [892] your giving them, or anything like that?

(Testimony of Lee Sau Chong.)

A. No, he got to pay for it; I didn't say "no pay for it".

Q. Could you think of anything he could have understood that way?

A. I think he made mistake.

Q. You think he must have made a mistake?

A. Yes sir.

Q. Did you have any intention of letting him have anything for nothing?

A. No, no intention giving him anything; I didn't tell him he could have anything without pay.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

Mr. ULRICH: Defendants rest.

Mr. MOORE: The United States rests.

The COURT: Let the record show that the testimony is closed. Now, gentlemen, we still have a little work left on our instructions. At what time would you suggest that this be determined, be concluded? There were some instructions to be rewritten by both parties when we had our last session.

(Discussion as to convenience of counsel.)

The COURT: Then we'll arrange to proceed with the instructions at 2:15. Now gentlemen of the jury, it's impossible or at least would not be fair to either counsel to ask them to commence the argument until the instructions are agreed upon, which means that we'll have to take up the argument in

this case tomorrow morning. The Court will not limit either counsel in their argument in reviewing the [893] evidence, but it will state to them at this time what an old minister at one time told me, that "Very few souls are saved after the first 20 minutes". The Court will now be at recess until 8:30 tomorrow morning. None of you were seriously inconvenienced by coming at 8:30 this morning, I take it. Then we'll begin at 8:30 tomorow morning in the hope of concluding this case tomorrow.

(Adjourned—10:27 a. m.) [894]

[Title of Court and Cause.]

The above entitled matter came duly on for the reading of instructions by the Court and argument by respective counsel immediately preceding final submission of the case to the jury, at 8:51 a. m. on Tuesday, May 28th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following proceedings were had:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll also so stipulate.

The COURT: Let the stipulation be entered.

Mr. MOORE: May we proceed to argue, may it please the Court?

The COURT: Just one moment. Now, gentlemen of the jury, you have listened patiently to this case for more than two weeks, and it is now the duty of the respective counsel to sum up the evidence and from the evidence argue what they contend from their respective sides of this case. [895] Now, it is just possible that one counsel will remember a certain bit of the evidence one way, and another a different way; that happens at different times in the course of a trial, and the Court may remember it one way or another; but it doesn't matter how the Court remembers it or how either counsel remembers it, it's a matter of how you remember it; and this case is almost in your hands now; and remember in these arguments neither Mr. Moore nor either of the counsel for the defendants are testifying, they are simply reviewing the evidence and arguing from that evidence as to what they believe to be the logical and correct conclusion. It's for you, from your memory of the evidence and using the judgment that God has given you, to determine; and I think it proper to call your attention to this now, so that you may have it in mind as respective counsel proceed, rather than at the close of the argument.

Mr. ULRICH: May I clarify my understanding at this time of the procedural rule to the effect that the opening argument on behalf of the prosecution includes all of the argument in chief, and rebuttal is confined entirely to rebutting the material urged by the defendants an behalf of the defendants?

Mr. MOORE: That's my understanding, may it please the Court.

Mr. ULRICH: I just want that understood.

The COURT: It's my understanding that that's the rule generally rather than absolutely. The opening argument should be so confined, and likewise the closing argument.

Mr. MOORE: (opening argument).

(Recess—10:22 to 10:35 a. m.)

Mr. ULRICH: (Argument). [896]

(Recess—11:53 a. m. to 12:02 p. m.)

Mr. MOORE: May it please the Court, at this time I would like to state that I don't see how I am going to be able to answer Mr. Ulrich's argument in less than 45 minutes, and with Your Honor giving the instructions I don't see how this jury is going to get out of here until some time after one o'clock; and I believe the jury should be allowed to state whether they had rather hear the rest of the argument and instructions now and go to lunch or to lunch now and here the balance after lunch.

Mr. ULRICH: May I just say this; I concluded my argument when I did on the assumption that the argument would be concluded at this time. There are a lot of things I would like to have argued if I thought there was going to be an adjournment and another session of court. I think we should continue, and if we don't continue I'd like to say a few further things to the jury.

Mr. MOORE: I have no objection to continuing.

The COURT: We will proceed, Mr. Moore.

Mr. MOORE: (argument in rebuttal).

The COURT: Gentlemen of the jury, if you had been at the Governor's dinner last night you probably wouldn't mind missing a lunch; you'd feel it would be good for you. Now, it would necessarily take the Court a considerable time to read these instructions, and this case has reached a stage now where you will no longer be permitted to separate until after you reach a verdict. At this time, Mr. Marshal, you may take the jury to lunch.

(Marshal and assistant sworn as bailiffs.)

The COURT: As soon as you've had your lunch, gentlemen, [897] you will return to the courtroom, and the Court will then instruct you and place the case in your hands.

(Recess—12:35 to 1:40 p. m.)

Mr. MOORE: Ready, stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll stipulate that the jury is present.

The COURT: Let the stipulation be entered. Mr. Clerk, will you file these, please (handing documents to Clerk). Gentlemen of the jury, it may avoid some confusion if the Court at this time makes a few remarks relative to these instructions that are about to be read to you. At different times in the progress of the trial you doubtless heard me speak to counsel about having a meeting for the purpose of settling instructions. I think I ought to explain to you what under our practice that means. It is the duty of the Court at this time to instruct you upon the law of this case. The way

these instructions are arrived at is about as follows: Attorneys for each side have a right to and usually do request that certain instructions be given to a jury. The attorneys and the Court meet together and go over these requested instructions, and out of the instructions requested usually some are given and some are refused. At other times it is found that each side will request instructions on practically the same thing. In such a case we usually select the instruction that is agreed upon to meet the conditions of the particular question the best; the other instruction is then withdrawn and the one agreed upon is given. After reading these instructions to you they will be handed to you to take to your jury room with [898] your deliberations; and you'll note that these instructions are not only numbered, but some of them are marked "Plaintiff's Instructions", and some are marked "Defendants' Instructions". Now, that "plaintiff's instruction" and "defendants' instruction" means simply this, that it was requested by the plaintiff or the defendants. But when this is given to you it is altogether by the Court, and because the given instruction has been requested by the plaintiff or requested by the defendants makes no difference, it is given to you and it is your duty as a jury to take it as the law of the case as the instruction of the Court; and these instructions are further numbered, and that is largely for the purpose of making up the record. The record that is made up here is made up to a considerable extent for the benefit of a review by a higher court if such review should be asked.

Instruction No. 1 (The Court reads).

Now, gentlemen of the jury, the Court will add orally that these facts are given to you for your information, to assist you in determining the interest or lack of interest of these several parties and the weight and credibility of their evidence, and are not to be considered by you in any light either favorably or unfavorably to the defendants now on trial; that is, the fact that one other defendant has pleaded guilty is not to be considered either as favorable or unfavorable to either of the two defendants now on trial, nor the fact that the defendant Miles is to have a separate trial, that fact is not to be considered either favorably or unfavorably to the two defendants or [899] either of them; but these facts are stated for your information for the purpose I have already stated, as will become more clear as we proceed with the instructions.

Instruction No. 2. (The Court reads).

Mr. McGHEE: The Defendants will note an exception to that instruction, Your Honor. The defendants note an exception to the giving of Plaintiff's Instruction No. 2.

The COURT: Let the exception be noted.

(The Court reads, in their order, instructions 3, 4, 5, 6, 7, and 8).

The defendant, in other words, gentlemen of the jury, stands just like the base runner in a ball game, and is to be given the benefit of every doubt.

(The Court reads instruction 9 and the first two paragraphs of instruction 10.)

In connection with the able arguments made by counsel in this case, each stated that in his zeal he might have gone further than he really intended or should have. I trust, in ruling upon the evidence and various matters that have come before the Court, I have said or done nothing that could in any way be construed as indicating an opinion of my own in regard to the guilt or innocence of these defendants, and if I have, you must absolutely disregard it, for it was not intended; and if I were to be substituted for you as a jury at this time I would have to start afresh on the evidence in order to determine what my verdict should be. So I couldn't express an opinion, for I have none, and properly should have none. In some jurisdictions, many jurisdictions, in fact, a court is not permitted to [900] comment in any way upon the evidence, and if it should it is generally reversible error on account of the prejudice that it would create. That is not true, as this states, in regard to United States district courts; but I have heretofore always refrained from commenting on the evidence, as I think the other is the better practice. And, unless for some very good reason I should change my mind, I think I can say safely at this time I never will. It would be an unwarranted invasion of what I think is the solemn and exclusive right of a jury.

(The Court reads remainder of instruction 10)

Instruction No. 11—11 doesn't seem to be here; I don't know what it is.

Mr. MOORE: It's out, Your Honor.

Instruction No. 12. (The Court reads)

(The Court reads instructions 13 and 14).

The COURT: These numbers are duplicates, because part of them were presented by one side and part by the other.

Next in order is Defendants' No. 1.

Mr. McGHEE: If the Court please, there may be some dispute about No. 11. What about that, Mr. Moore?

Mr. MOORE: If Your Honor will conclude the instructions, I think it's covered in the balance of them; if it isn't we'll notify you at the conclusion.

The COURT: It may be laying on my desk in chambers. Mr. Bailiff, will you go in and see if you can find an Instruction No. 11 laying on my desk?

(Bailiff complies)

The COURT: This is Defendants' Instruction No. 1. (Reads).

The COURT: I'll now read you No. 11—— [901]

Mr. MOORE: No, may it please the Court, that's the one that's refused. That, you will note, has been refused, and this one marked "11-A".

The COURT: (Reading): "You are instructed that in this case two of the defendants now on trial have testified in their own behalf. This is a right conferred upon them by the law. The fact that they are defendants may be considered by you as bearing upon their interest in the result of the case, in connection with determining the weight and credibility to be given to their testimony, but apart from such consideration the testimony of such defendants is to be treated the same as the testimony of other witnesses."

Instruction No. 3 (The Court reads).

The COURT: No. 4 was refused. (Reads Instruction No. 5)

(The Court reads Instructions No. 6, 7, 8)

The COURT: No. 9 was refused.

Mr. MOORE: Yes, Your Honor.

(The Court reads Instruction No. 10)

The COURT: No. 11: "You are further instructed"——

Mr. MOORE: That's been withdrawn, Your Honor.

(The Court reads Instruction No. 12)

The COURT: No. 15 is the next one that will be given.

(The Court reads Instruction No. 15).

(The Court reads Instructions No. 16, 17, 18, 19)

The COURT: Gentlemen of the jury, you will note that in several instances these instructions are more or less similar; there's a slight shade of difference in meaning in almost all of them. We have tried very hard not to [902] have any conflicting instructions go in, and some I'll have to take in just as they are.

Mr. McGHEE: If the Court please, the defendants now take exception to the giving over the objections of the defendants of the Government's Instructions numbered 2, 4, 5, 9, 10, and 14.

The COURT: 2, 4, 5, 9, and 14?

Mr. McGHEE: 2, 4, 5, 9, 10, and 14. Defendants further except to the refusal of the Court to give Defendants' Requested Instructions numbered 4, 9, 13, and 14.

The COURT: Let these exceptions be duly noted.

Now, gentlemen of the jury, just one word more. You have before you eight problems, for as to each of these two defendants you must find four things; you must find Lee Chong either guilty or not guilty of each of the two counts; you must find the defendant Mookini guilty or not guilty of each of the two counts. And there will be handed you with the instructions a form of verdict covering what I have just stated, with a blank line in which, after you have reached an agreement on any of these points, you will either write "guilty" or "not guilty" in the proper place. I am sure you'll find no trouble with the form of the verdict; and when you have agreed upon all these points you will return in to Court with your verdict. You will now retire with the Bailiff to the jury room. Is there anything further you wish to offer, from either counsel?

Mr. ULRICH: Nothing further, Your Honor.

The COURT: You are entitled to the exhibits as well as the instructions, gentlemen of the jury. Swear the Bailiff. (Marshal and assistant sworn as bailiffs—2:17 pm) [903]

(At 6:00 p. m. the jury were taken to dinner by the bailiffs, returning in about one hour to continue deliberating. At 9:57 p. m. the Foreman of the jury appeared in the courtroom, and the following proceedings were had):

FOREMAN: We have arrived at a verdict on 3 of the counts, and we're now threshing out the 4th count.

The COURT: Would you prefer to continue that, or would you like to go to bed?

FOREMAN: Judge, it's a matter that's immaterial to me; I'd prefer to continue, then we can, I think in a matter of 15 or 20 minutes we can conclude it.

The COURT: I think we would all prefer to have it concluded; you may so report to the jury.

FOREMAN: Judge, may I ask a question?

The COURT: Certainly.

FOREMAN: If the jury have agreed by a unanimous vote on one count, have they a right to change their vote if one of them disagrees after he has agreed on it? For instance, 11 of us have agreed on one of these counts; supposing one of these jurors says "I want to change my vote on that" after he has already given it and got me to write in the word "guilty" in the form of verdict?

The COURT: I don't know that I have ever heard that question, but I don't hesitate to answer it, but I believe he could change——

FOREMAN: You believe he could change his mind?

The COURT: Yes; it wouldn't show an "abiding conviction".

FOREMAN: I'll endeavor to get them together as quickly as possible on that list. [904]

The COURT: Yes, do so, Mr. Foreman, please. The Court will be at recess until we hear from the jury, 10:15 p. m. (The jury return to the courtroom)

The COURT: Gentlemen of the jury, have you reached a verdict?

FOREMAN: We have.

The COURT: You may hand it to the Clerk, please, Mr. Foreman.

(Foreman of Jury hands document to Clerk, who shows it to the Court, the Court returns document to Clerk)

The COURT: Mr. Clerk, you will read the verdict.

CLERK: Defendants rise, please. (Defendants comply).

Omitting the title, court, and cause, the verdict:

"We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find as follows:

ROBERT K. MOOKINI, of Count One—Guilty

Of Count Two—Not guilty

LEE SAU CHONG—Of Count One—Guilty

Of Count Two—Guilty

of the Indictment heretofore filed herein.

Dated—Honolulu, T. H., May (blank), 1935.

(Signed) WILLIAM W. JEFFERSON,
Foreman."

Mr. MOORE: I don't think there's any objection to putting "May 28" in the verdict, Mr. Ulrich?

Mr. ULRICH: No.

The COURT: The Clerk will supply the date. Gentlemen of the jury, is this your verdict?

JURORS: Yes sir.

The COURT: So say you all?

JURORS: Yes sir. [905]

Mr. ULRICH: On behalf of the defendants, if Your Honor please, I except to the verdict as rendered against each defendant as contrary to the law and the evidence and the weight of the evidence, and give notice of motion for a new trial.

The COURT: Let the exceptions and notice be entered. Mr. Clerk, you will see that this verdict is duly filed and recorded.

Mr. MOORE: At this time the United States Attorney's office wishes to thank this jury for their earnest consideration of this case, and also wants to congratulate Mr. Ulrich upon putting up a vigorous and clean defense in this case.

The COURT: And the Court will add, it has been a pleasure to try this case for the reason that it was tried on both sides as it should be by attorneys of experience and training, and the jury were most attentive through a very long, trying ordeal. You should have the thanks not only of the Court but of your community for rendering such service.

I HEREBY CERTIFY the foregoing to be a full and accurate transcript of my shorthand notes taken in the above entitled cause.

Official Court Reporter.

[906]

[Title of Court and Cause.]

TRANSCRIPT OF PROCEEDINGS OF HEARING ON MOTION FOR A NEW TRIAL AS TO THE DEFENDANTS ROBERT K. MOOKINI AND LEE SAU CHONG.

The above entitled matter came duly on for hearing before the HONORABLE S. C. HUBER, Judge of the aforesaid Court, on Friday, June 14, 1935, at 11 o'clock a. m., whereupon the following proceedings were had:

W. C. MOORE, Esq., Assistant United States Attorney, appearing for the government, and

BARRY S. ULRICH, Esq., appearing as attorney for the defendants.

Mr. ULRICH: If the Court please, I will substitute at this time as best I can, for Mr. McGhee, from whom I expect to have further affidavits and further things to complete the matter before the matter is finally completed. I do not wish to delay more than necessary and will proceed with an argument at this time, with the understanding that I may complete the record, if Your Honor [908] will permit me so to do, before the ruling of the Court be definitely made.

Mr. MOORE: If any affidavits are to be filed, we ask that the United States be granted leave to file any counter-affidavits that may be deemed necessary.

The COURT: That will be quite proper.

(Mr. Ulrich argues motion for a new trial.)

Mr. ULRICH: In my affidavit, and I want to say at the outset I hope that I have accurately

stated what Your Honor has said to me,—I hope that the Court will correct my affidavit in any regard by any statement that the Court may feel it would like to make.

The COURT: I have read the affidavit, and as I remember it it is substantially correct.

(Mr. Ulrich continues with his argument.)

(Argument by Mr. Moore.)

(Argument by Mr. Ulrich.)

Mr. ULRICH: I would like to have an opportunity to file these further affidavits and also a brief memorandum, if Your Honor will care to have it.

The COURT: It is always unsatisfactory to hear these matters piecemeal, but we are in that situation in this particular case, and I do not wish to rule on it piecemeal; I will wait until the argument is concluded before passing on it, except in fairness I would say this, that after I knew this matter was being tried out and a motion was filed I made some independent investigation of my own and found cases very directly on it, both by the Supreme Court of the United States and the Circuit Court of Appeals [909] of the 9th Circuit, bearing on this very question, and I feel that I would be bound by their holding.

(Discussion.)

The COURT: This hearing will be adjourned until 10 o'clock Tuesday morning, at which time it is hoped it may be concluded.

(Hearing further adjourned until Wednesday, June 19, 1935, at 3:03 p. m.) [910]

Wednesday, June 19, 1935, 3:00 o'clock p. m.

The within entitled matter came duly on for further hearing on motion for a new trial as to the defendants Robert K. Mookini and Lee Sau Chong at 3 o'clock p. m. on Wednesday, June 19, 1935, before the HONORABLE S. C. HUBER, Judge presiding, all parties being present as at the last hearing, and in addition Earl McGhee, Esq., on behalf of the defendants, whereupon the following proceedings were had:

The COURT: This is a continuation of the hearing on motion for new trial.

Mr. ULRICH: At this time, if the Court please, I should like to file in support of the motions of Mookini and Lee Chong, severally, the affidavits of Mr. McGhee, to be filed in this Court, if Your Honor please.

Mr. MOORE: For the purposes of the record, may it please the Court, we object to the filing of the affidavits on two grounds: First, that they were not filed within the ten day period, and, second, that in so far as the affidavits relate to having an effect on the jurors in arriving at their verdict, it is on information and belief, and not direct, that there is the statement in the affidavit that it was "information and belief" at the time the note was sent by Your Honor.

(Mr. Moore reads from affidavit.)

If you will recall, Your Honor, that information was sent up during the afternoon while I was

in another Court and the jury did not return a verdict until about 9, as [911] I recall, or after 9 o'clock, which is at least six hours, this says "within an hour."

(Argument)

Mr. ULRICH: So far as there being any inaccuracy of a statement of fact, of course that can be cured by a counter-showing; if they are not accurate statements they should be corrected.

(Argument by Mr. Moore and Mr. Ulrich.)

The COURT: The affidavit is certainly something that the defendant would be entitled to have a record made of, so that if any error is committed in regard to it it could be properly reviewed.

(Mr. Ulrich reads affidavit to the Court.)

The COURT: Is this affidavit really intended to be considered as part of the motion?

Mr. ULRICH: Yes, Your Honor, in support of that motion, filed in support of it as one other affidavit has been filed.

The COURT: You may proceed with the argument.

(Argument by Mr. Ulrich.)

Mr. MOORE: May it please the Court, I will ask your Honor if I am not correct when I state that the information sought was how many enlisted men were at this camp; the average amount of enlisted men?

The COURT: Yes, covering either three or four months.

Mr. MOORE: In other words, what was asked was, what was the amount of enlisted men during

that period of time; nothing said as to any particular dinner? [912]

The COURT: No, nothing whatever.

Mr. MOORE: And the answer sent by your Honor, the Judge, was "From 180 to 200".

The COURT: That is correct.

Mr. MOORE: And there was nothing said as to any particular dinner at all.

The COURT: The Court's recollection is it was for the months of April, May and June; it may have been March, April and May; it was one or the other.

Mr. MOORE: And your message was sent, I understand, sometime during the afternoon, before four o'clock?

The COURT: I know it was during the afternoon; I believe it was before four o'clock.

Mr. MOORE: Of the day the case was argued.

The COURT: That is correct.

(Argument by the attorney for the government, Mr. Moore.)

(Argument by Mr. Ulrich.)

Mr. MOORE: If they are going to stand on that affidavit I will ask leave to file a similar affidavit on information and belief and setting forth the names of jurors that I have talked to and will present it to the Court by noon tomorrow morning.

The COURT: The affidavits of ten jurors that they had not been influenced would be more than counterbalanced by one or two jurors who said they

had been influenced, in the opinion of the Court. Such an affidavit would be entirely negative in character, and of no value, [913] and besides the Court will cite, in ruling upon this case, that the Supreme Court has taken exactly the same view in regard to affidavits supporting a verdict that they do in regard to affidavits tending to impeach a person.

Now nothing has been said in this argument about any of the grounds for a new trial except this one, which is Number 14 in the Lee Chong motion, and Number 12 in the Mookini motion——

Mr. ULRICH: The Court does not understand that we are waiving those grounds? I think I definitely stated to the Court that I would not make an argument on those grounds, but we did reserve the grounds and said we would submit them to the Court without argument, because most of the points had already been argued.

The COURT: So far as the motion for a new trial is based upon the overruling of the demurrer, the motion for a new trial is overruled.

There is also a ground in here to the effect that the defendants were charged with two crimes when only one could properly be considered. That is sufficiently answered by revised statute 1024, which expressly makes provision for just that very thing, and that ground is overruled.

The next ground is the one that has been argued. Omitting the first part of it, it proceeds to say: "did make and send a certain statement of fact to said

jury as to the number of men enrolled at the C. C. C. Camp, which fact as so stated did not appear in the evidence in [914] the case and was based upon in- of the record of said case".

As to that the Court will now say that Major Mahaffey, Captain Baldwin, Captain Miles and possibly director Lloyd gave evidence of fact from which the statement by the Court can easily be verified. In addition to that Exhibit "L" actually contains the information, and that was with the jury at the time. After this motion was filed the Court examined Exhibit "L" and finds that it states for the month of April there were 5681 man days, and if you will divide that by thirty you will find the average to be 189; for May it gives 5877 man days, so dividing that by thirty gives 195; for June 5671, which divided by thirty gives 185, all of which verifies the correctness of the statement made. Instead of the statement of fact being in conflict with, it is entirely supported by the evidence in the case. Nor has there been anything brought to the attention of the Court from which it would conclude that the information given affected the defendants adversely rather than favorably, except the mere fact that a jury returned a verdict that was adverse to the defendant.

There is nothing that the Court can see at this time that would be prejudicial, in view of the fact that it was just as apt to be favorable as unfavorable, in the opinion of the Court. [915]

The Court will now call attention to the case of Charlton v. Kelly, 156 Fed., 433, an opinion by the 9th Circuit Court of Appeals, in which, among other things, the Court says:

"There is evidence from affidavits of the jurors that the marshal remarked to the jury that the case was an important one, that it was on trial for a second time, and that they ought to be able to argee. The jury at that time stood evenly divided. They were thereafter brought into court and further instructed, and again retired and agreed upon a verdict for the defendant in error. The remarks of the marshal to the jury were set forth in affidavits and were presented to the Court on a motion for new trial. The motion was overruled, and judgment entered for the defendant in error."

The opinion further states: "What is the matter with you that you can't agree in this case?" as a remark which the marshal made. "This is a very important case, and this is the second time it has been tried. You ought to be able to come to some agreement some way."

Now the Court in passing upon that said: "There is nothing in the affidavits to show that any of the jurors was influenced by these remarks, and there is nothing in the language shown calculated to influence the jury for one or the other of the parties. While such remarks by an officer of the court to a jury are prohibited by law, and should be discountenanced, they are not [916] necessarily ground

for a new trial, and they are certainly not ground for the reversal of a judgment in an appellate court after the trial court has passed upon their force and effect on a motion for a new trial."

Now the Supreme Court of the United States has passed upon the same thing in the case of United States v. Reid, 12 Howard, 361, 13 L. Ed. 1023, in these words:

"Without laying down any general rule, how far the affidavits of jurors impeaching their verdict ought to be received, it is decided that the affidavits of two jurors, stating that, whilst impaneled, they read a newspaper report of the preceding evidence, but which had no influence upon their verdict, were not sufficient ground for a new trial.

* * * he offered in evidence the voluntary affidavits of the two jurors, one of whom deposed 'that, while the case was on trial, and the jury were impaneled, a newspaper was sent to him by some of his family from his counting room. It was a newspaper for which he was a subscriber, which was regularly left at his counting house and which he was accustomed to read. He looked slightly over it and saw that it contained a report of the evidence which had been given in the case under trial, a part of which he read and put the paper in his pocket; that, while the jury were in their room deliberating on their verdict, he read over the report of the evidence in the newspaper; he read it from curiosity, and thought it correct, and that it refreshed [917] his memory;

but it had no influence on his verdict, and that he had made up his mind before he read it. There was no conversation about the newspaper report in the jury room, nor did he speak of it there to any one, nor does he know that the other jurors knew that the report of the evidence was in the newspaper they saw him reading.' "

The Court says, in passing upon that:

"It would perhaps hardly be safe to lay down any general rule upon this subject. Unquestionably such evidence ought always to be received with great caution. But cases might arise in which it would be impossible to refuse them without violating the plainest principle of justice. It is, however, unnecessary to lay down any rule in this case, or examine the decisions referred to in the argument. Because we are of opinion that the facts proved by the jurors, if proved by unquestioned testimony, would be no ground for a new trial. There was nothing in the newspapers calculated to influence their decision, and both of them swear that these papers had not the slightest influence on their verdict.

That the facts stated in the affidavits of the jurors do not entitle the prisoner to a new trial."

There is one other case, and if I can find it here I would like to read it: You will recall in the Reid case, read a moment ago, the Supreme Court said it would not pass upon the question of whether jurors by affidavits could impeach their verdict. Since then the [918] Supreme Court has directly passed on that point.

In the case of McDonald vs. Pless, 59 Law Edition, 1300, at page 1302, also found in 238 U. S., at 264, the Court says: "But though revised statutes, section 914, does not make the North Carolina decisions controlling in the Federal court held in that state, we recognize the same public policy which has been declared by that court, by those in England, and most of the American states. For while by statute in a few jurisdictions, and by decisions in others, the affidavit of a juror may be received to prove the misconduct of himself and his fellows, the weight of authority is that a juror cannot impeach his own verdict."

Now if a juror cannot impeach his own verdict, certainly the attorney cannot.

The Court further says: "The rule is based upon controlling considerations of a public policy which in these cases chooses the lesser of two evils. When the affidavit of a juror, as to the misconduct of himself or the other members of the jury, is made the basis of a motion for a new trial, the Court must choose between redressing the injury of the private litigant and inflicting the public injury which would result if jurors were permitted to testify as to what had happened in the jury room."

"These two conflicting considerations are illustrated in the present case. If the facts were as stated in the affidavit, the jury adopted an arbitrary and unjust [919] method in arriving at their verdict, and the defendant ought to have had relief, if the facts could have been proved by witnesses who were

competent to testify in a proceeding to set aside the verdict. But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the findings. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation; to the destruction of all frankness and freedom of discussion and conference."

This decision was handed down long after the decision in the Reid case, and, as it states, follows the courts of England and practically all the courts of the United States.

In another case I examined the man was charged with murder and there was some misconduct,—I have forgotten just exactly what it was that was complained of in that case; I believe the marshal or bailiff entered the jury room and told them they ought to convict this man, that this was the third murder he had committed, [920] and other things, and the Court refused the matter to be shown by affidavit or deposition for the reasons stated here, that it was against public policy and would result in greater harm and injury than could possibly result otherwise.

Now if the affidavit of a juror himself could not be received, much less could the affidavit of the attorney, based on information and belief. The motion of the defendants for a new trial is overruled.

Mr. ULRICH: On behalf of the defendants Mookini and Lee Chong I except at this time to your Honor's ruling overruling the motion and denying the motion for a new trial as presented by each defendant.

The COURT: Let the exceptions be noted and granted.

Mr. ULRICH: It may be understood the exceptions are made separately on behalf of each defendant.

The COURT: It is so understood.

Mr. MOORE: How about sentence at this time.

Mr. ULRICH: I haven't given that particular thought yet. I would like to have that put over and ask that the matter of sentence be set over until 9 o'clock Saturday morning.

The COURT: That will be satisfactory. The Court would like to give that matter some more thought himself. The matter will be taken up at 9 o'clock next Saturday morning.

(Adjourned to 9 o'clock a. m. Saturday, June 15, 1935, for sentence.) [921]

I HEREBY CERTIFY the foregoing, pages 1 to 14, inclusive, to be a full, true and correct

transcript of my shorthand notes taken in the within entitled matter.

Honolulu, T. H.
September 23, 1935.

(s) R. N. LINN
Official court reporter (pro tem)

[922]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD ON APPEAL.

The United States of America,
Territory of Hawaii—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 922 inclusive, in four volumes, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office and I further certify that I am attaching hereto the original citation on appeal and that the costs of the foregoing transcript of record on appeal are $68.05 and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court this 16th day of April, A. D. 1936.

[Seal] WM. F. THOMPSON, JR.,
Clerk, U. S. District Court, Territory of Hawaii.

[Endorsed]: Filed April 16, 1936. [923]

[Endorsed]: No. 8183. United States Circuit Court of Appeals for the Ninth Circuit. Robert K. Mookini and Lee Sau Chong, Appellants, vs. United States of America, Appellee. Transcript of Record. In Four Volumes. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed April 28, 1936.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 8183

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

ROBERT K. MOOKINI, and LEE SAU CHONG,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Upon Appeal from the District Court of the United States for the Territory of Hawaii.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

[Title of Court and Cause.]

OPINION.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Before: WILBUR, GARRECHT and MATHEWS, Circuit Judges.

MATHEWS, Circuit Judge:

In the United States District Court for the Territory of Hawaii, appellants, Robert K. Mookini and Lee Sau Chong, were jointly indicted and tried for violating § 35 of the Criminal Code, 40 Stat. 1015, 48 Stat. 996 (18 U.S.C.A. § 80).[1] The indictment was in two counts, charging similar offenses alleged to have been committed on June 7, 1934, and September 7, 1934, respectively. Mookini was found guilty on the first count and not guilty on the second. Lee Sau Chong was found guilty on both counts. Motions for a new trial were denied and appellants were sentenced. This appeal followed.

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[1]Section 35: "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both . . ."

The verdict in this case was rendered on May 28, 1935. The motions for a new trial were filed on June 7, 1935, and were denied on June 19, 1935. Judgment was entered on June 29, 1935. This appeal was applied for by petition filed September 27, 1935, and was on that date allowed by the trial court. It was not taken in the manner or within the time specified in Rule III of the "Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilt, in criminal cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia," prescribed by the Supreme Court of the United States on May 7, 1934 (28 U.S.C.A. § 723a). Rule III provides:

> "An appeal shall be taken within five (5) days after entry of judgment of conviction, except that where a motion for a new trial has been made within the time specified in subdivision (2) of Rule II, the appeal may be taken within five (5) days after entry of the order denying the motion.
>
> "Petitions for allowance of appeal, and citations, in cases governed by these rules are abolished.
>
> "Appeals shall be taken by filing with the clerk of the trial court a notice, in duplicate, stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and

appellant's attorney, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and, if the appellant is in custody, the prison where appellant is confined. The notice shall also contain a succinct statement of the grounds of appeal and shall follow substantially the form hereto annexed."

Are these rules applicable to criminal cases in the United States District Court for the Territory of Hawaii? They were prescribed under and pursuant to the Act of February 24, 1933, c. 119, 47 Stat. 904, as amended by the Act of March 8, 1934, c. 49, 48 Stat. 399 (28 U.S.C.A. § 723a). Section 1 of the Act, as amended, provides:

"That the Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, in the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States. . . ."

The Supreme Court's order of May 7, 1934, reads as follows:

"It is ordered on this seventh day of May, 1934, that the following rules be adopted as the Rules of Practice and Procedure in all proceedings after plea of guilty, verdict of guilt by a jury or finding of guilty by the trial court where a jury is waived, in criminal cases in the District Courts of the United States and in the Supreme Court of the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.

"It is further ordered that these rules shall be applicable to proceedings in all cases in which a plea of guilty shall be entered or a verdict or finding of guilt shall be rendered, on or after the first day of September, 1934."

Comparing the Act with the order, it will be observed that, instead of referring, as the Act does, to "district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands," the order refers only to "District Courts of the United States." The United States District Court for the Territory of Hawaii may not, for all purposes, be considered a district court of the United States, but it has the jurisdiction of a district court of the United States and is by law required to proceed in the same manner as a district court of the United States, and appeals from that court to this court are required to be taken in the same manner as

appeals from district courts of the United States. See § 86 of the Hawaiian Organic Act (42 Stat. 119, 43 Stat. 890) and §§ 641, 642 and 645 of Title 48, U.S.C.A., derived therefrom.[2]

Necessarily, therefore, when the Supreme Court prescribes rules governing practice and procedure after plea of guilty, verdict or finding of guilt in criminal cases in district courts of the United States, such rules must and do govern such practice and procedure in the United States District Court for the Territory of Hawaii. The rules so prescribed on May 7, 1934, were applicable to this case. The time within which appellants might have taken a valid appeal expired on July 6, 1935. This appeal, which they attempted to take on September 27, 1935, must be dismissed. O'Gwin v. United States (C.C.A. 9), ... F.(2d) ....., decided June 7, 1937; Burr v.

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[2]Sections 641, 642 and 645:

"§641. District court; sessions; powers; terms. There shall be established in the Territory of Hawaii a district court, to consist of two judges, who shall reside therein and be called district judges. . . .

"§642. Jurisdiction of district court; authority of officers. The said court shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court; and the said judges . . . shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges . . . of district courts of the United States."

"§645. Appeals. Appeals from the said district court shall be had and allowed to the circuit court of appeals for the ninth judicial circuit in the same manner as appeals are allowed from district courts to circuit courts of appeal as provided by law. . . ."

United States (C.C.A. 7), 86 F.(2d) 502, 503. See, also, Fewox v. United States (C.C.A. 5), 77 F.(2d) 699.

Appeal dismissed.

[Endorsed]: Opinion. Filed Jul. 26, 1937. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 8183.

ROBERT K. MOOKINI, and LEE SAU CHONG,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

JUDGMENT.

Upon Appeal from the District Court of the United States for the Territory of Hawaii.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Territory of Hawaii and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the appeal in this Cause be, and hereby is dismissed.

[Endorsed]: Filed and entered. Jul. 26, 1937. Paul O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of O. P. Soares, Esq., counsel for the appellants, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including August 25, 1937; and in the event the petition for a writ of certiorari to be made by the appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT,
United States Circuit Judge.

Dated: San Francisco, California, August 2, 1937.

[Endorsed]: Filed Aug. 2, 1937. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing fifteen hundred and twenty-two (1522) pages, numbered from and including 1 to and including 1522, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of August, A. D. 1937.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 1024] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.